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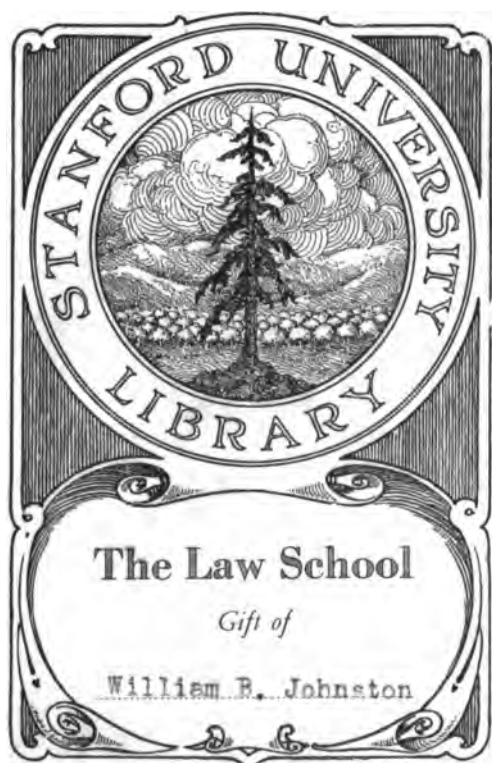
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H. M. JOHNSTON,  
FRESNO, CAL.





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A  
NEW LAW DICTIONARY

AND  
GLOSSARY:

CONTAINING FULL DEFINITIONS OF THE PRINCIPAL  
TERMS OF THE COMMON AND CIVIL LAW,  
TOGETHER WITH TRANSLATIONS AND EXPLANATIONS OF THE VARIOUS  
TECHNICAL PHRASES

IN DIFFERENT LANGUAGES, OCCURRING IN THE ANCIENT AND MODERN REPORTS, AND STANDARD  
TREATISES; EMBRACING ALSO ALL THE PRINCIPAL COMMON AND CIVIL

LAW MAXIMS.

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COMPILED ON THE BASIS OF SPELMAN'S GLOSSARY, AND ADAPTED TO THE  
JURISPRUDENCE OF THE UNITED STATES;  
WITH COPIOUS ILLUSTRATIONS, CRITICAL AND HISTORICAL.

By ALEXANDER M. BURRILL,

COUNSELLOR AT LAW.

*Vocum origines rationesque [Lab. o] perscrutaverat; eaque principes et leges et modos, plerisque juris laqueos utebatur.*  
A. GELLIIUS, Noct. Att. xiii. 10.

PART I.

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ALEXANDER M. BURRILL,

In the Clerk's office of the District Court of the United States for the Southern  
District of New-York.

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YRABILL GROTMAIR

NEW-YORK:  
BAKER, GODWIN & CO., PRINTERS;  
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TO THE

HON. WILLIAM KENT, LL. D.

DEAR SIR,—

I am sensible of a peculiar propriety in availing myself of your permission to inscribe to you the following work. It embodies, (in however imperfect a form,) the results of studies which received their earliest impulse and direction under the eye of your venerated father, and it is chiefly designed for use in a profession, in the practical duties of which I first received instruction from yourself. Knowing that, in you, professional eminence has ever been accompanied and adorned by the accomplishments of literature, I feel the less hesitation in offering to your notice a work which, in its general scope and bearing, belongs, perhaps, quite as much to the department of literature as to that of law. Knowing too, that you are not one of those who, in their desire for improvement, would dis sever the science of jurisprudence from its close dependence on the wisdom and learning of the past, I have hoped that you would not view with disapprobation or distaste the frequent references its pages contain to the lore of an almost forgotten age. But my highest satisfaction is in dedicating it to you, as a testimonial of personal esteem and regard, and as an expression of my sense of the unvarying kindness I have ever experienced at your hands.

With every wish for your future happiness, and with sentiments of the greatest respect,

I remain faithfully,

Your friend and servant,

ALEX. M. BURRILL.

*New-York*, DEC. 20th, 1850.





## P R E F A C E .

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THE object aimed at in the following work has been solely to illustrate the *language* of the law, and with this view its plan has been purposely confined to the exposition of *words and phrases only*, to the exclusion of much of the matter contained in most of the law dictionaries now in use. In this respect, the example of the older lexicographers, such as Cowell and Spelman, has been followed, in preference to that of writers of more modern date.

The "Interpreter" of Cowell, the earliest systematic English work of the kind, possesses also the merit of being the basis of the best English law dictionaries which have been given to the public. The unsparing use, indeed, made of this author (frequently without acknowledgment,) by those who have followed him, has justified to the letter the strong expression of Spelman,\*—*a plagiaro nequiter devoratus*. The "Nomo-Lexicon" of Blount is little more than a re-print of the Interpreter, (with, however, some valuable corrections,) and a very large portion of the Dictionary of Jacob has obviously been derived from the same source. The last named author seems to have been the first to introduce the practice of superadding to the definition and exposition of the terms of the law, *summaries of the law itself*, under the titles indicated by the terms explained; a practice which, though tending to give to dictionaries the form and bulk of cyclopædias, has been followed by several modern works of merit and authority.

The exclusion of this superadded matter from the plan of the present work, (as already mentioned,) has left room for more fully presenting the explanations which it is intended to convey, and which are given, it will be seen, through the double medium of *definition* and *translation*. In other words, it will be found to unite the qualities of a Dictionary and Glossary indicated in its title;—a combination which has enabled the author to present not only the ordinary terms of the law, but those also of rarer occurrence, those which are chiefly used for the purpose of illustration, and those which exclusively belong to the ancient law and to foreign systems. In both these aspects, its plan will now be more particularly explained.

As a Dictionary, it is devoted to the *definition of law terms*, including not only technical terms, or "words of art," properly so called, but also ordinary words which have been used in technical senses, or which have been made the subjects of judicial or legislative construction or definition.

As a Glossary, it is devoted to the translation and explanation of such law terms and phrases as are either partially or entirely obsolete, of terms belonging to foreign systems of law, of ordinary words occurring in old law writers, and of that great variety of entire

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\* *Glossar. in pref.*

and fragmentary phrases in various languages, (principally Law-Latin and Law-French, but occasionally Greek, Saxon, and the modern languages,) which are to be met with in the ancient and modern books: consisting of Law Maxims, quotations from old authors having the force of maxims, occasional lines or couplets in verse, detached portions of sentences, and initial or emphatic words of old writs, statutes and judicial formulæ.

The terms and phrases, thus defined and explained, comprise those of the common, civil, canon, and feudal law, the principal codes of the middle ages, the law of nations, the general maritime law of Europe and America, and the ancient and modern municipal law of Scotland, France and Spain, together with such as may be considered peculiar to the jurisprudence of the United States.

I. As a Dictionary, the work, as already observed, is exclusively devoted to *definition*; the matter being arranged in the following order. First, the word to be defined is given in its ordinary form, with such varieties in orthography as have been noticed, and followed by an abbreviation indicative of the language to which it belongs. Next are given, in brackets, the equivalent words, if any, of the old law, which are generally in Law-Latin or Law-French; and the composition or etymology of the word, according to the best authorities. To this succeeds a notice of the department of law to which the word belongs, briefly expressed; as, "In the civil law," "In English law," "In maritime law," "In criminal law," &c., according to the case; and where a term or proceeding is no longer in use, it is distinguished as being "In *old* English law;" "In *old* practice," &c. After these preliminary explanations, the definitions follow. These have been either literally extracted, or made up from the best sources within the author's reach, and are illustrated, in most cases, by examples and quotations. Where a term has received various definitions from writers of authority, a selection has generally been made of the one which was deemed the best, but in the case of leading or important words, all the definitions which have been examined are given at length. In a few instances, new definitions are submitted, which are distinguished either by an asterisk at the end, or by the absence of any reference. Where a term has several significations, care has been taken to give all that could be collected, with the proper references; and the same is done where a word has been used in different senses, at different periods of time.

It has sometimes happened that no mere definition, however carefully expressed, would suffice to convey the full meaning of the term or phrase under consideration. In such cases, resort has been had to the aids of what may be called *descriptive definition*, and of illustration by *example*; the utility of which, it is believed, will be apparent. In addition to these, however, illustrations of a still more extended kind have occasionally been subjoined, somewhat on the plan of the "*Diatriba*" of Spelman; and as these *supplementary notices* constitute one of the peculiarities of the work, the objects and uses of them will now be briefly explained. With a view to greater distinctness, they are separated from the other matter by a very obvious mark, and are chiefly occupied with the following subjects: etymology—history of the introduction of terms and of the changes they have undergone in meaning,—and critical observations on the definitions given.

The abuses to which etymology has at times been subjected, have contributed to give that branch of legal philology a much lower place in general estimation than it once enjoyed. Hence the comparatively slight attention paid to it in the modern law dictionaries, as contrasted with the laborious researches of Spelman, Calvin, and other

early lexicographers. Its obvious value, however, in throwing light upon the meaning of language, cannot be obscured by any mere mistakes of judgment in its application. The failures of some of the great Roman jurists, as well as of Lord Coke and other eminent common lawyers, in matters of verbal derivation, seem to have arisen partly from a desire to accommodate the etymology of words to what, it was supposed, *ought to be* their meaning, and partly from an *undue extension* of the process of *analysis* itself, simple words being often needlessly, sometimes absurdly separated into what were imagined to be, or to have been their component parts. Another source of error in etymology seems to have been, the neglect to treat it in a *historical* light. It is not enough to pursue a word back to its remotest literal elements, without reference to its legal use and application as fixed by *time*. The true legal elements of a word often lie at a much lower point in this scale than is generally supposed, and beyond this point there is no advantage, nay often actual confusion and error, in tracing them. It is easy, for instance, to refer *libel*, (a defamatory publication,) to the Latin *libellus*, (a little book,) its undoubted origin as a *mere word*, but this throws no light on the essential meaning of *libel*, as a *term of law*. To reach such meaning, we must descend to the lower period when *libellus* was used to express not so much the outward form of the material and the writing, as the object intended by it, and when certain of these *libelli* had become distinguished, as a class, by an epithet (*famosi*,) peculiarly expressive of their character, and which became thereafter inseparably annexed to them. To find the period when the term *libellus famosus* first acquired a settled meaning, is to fix the origin of the modern word *libel*. Indeed, without this reference to *time*, and its important influence in modifying, changing, and sometimes even reversing the sense of words, the most accurate and unquestionable derivations lose all their value as illustrations of meaning. The significance of the radical ideas of such words as "*adjourn*" and "*assets*," cannot be appreciated without reference to the periods when they first appear to have been used. Mere speculation, in short, is of little value in etymology, unless verified by examples of the *actual use* of words at former periods, and the process, (laborious as it may be,) of tracing words upwards through ancient records and writers, always keeping in view the influences which have been mentioned, seems to be the only accurate means of reaching what may, with any confidence, be pronounced the elements of their composition.

II. As a Glossary, the following work is necessarily devoted in a great degree to translation; a large proportion of the phrases explained being taken either from the Latin of the civil law, or the Law-Latin and Law-French of the old common law. In translating, care has been taken to follow the originals as closely as the English idiom would permit. In many instances, freer translations have been added for the purpose of clearer illustration, but in no case substituted for the others. Whenever it was practicable, phrases of a fragmentary character have been restored to their places, as portions of the clauses or sentences to which they were found to belong, and the entire clauses or sentences have themselves been presented and translated for the purpose of more clearly explaining their use and application.

Law maxims, it will be seen, occupy a prominent place in this department. In the translation of these, particular attention has been paid to accuracy, and errors and misconceptions of other translators have occasionally been pointed out. Short illustrations of their use have generally been given by examples and quotations from eminent writers, and judges; and the maxims themselves have been traced, whenever practicable, to their sources in the old common law writers, or in the civil law.

A Glossary of names of places, and another of surnames will be found at the end of the work. These have been taken from the dictionaries of Cowell and Blount, with such corrections as appeared necessary, and with such additions as the limited time of the author would permit.

III. The principal authorities which have been followed or consulted in the preparation of this work are the Interpreter of Cowell and the Glossary of Spelman. Both these indeed, may be said to constitute its basis; the latter, also, (which it were superfluous to commend,) being generally adopted as a model. The old Law-French work entitled "*Termes de la ley*," and the Dictionaries of Jacob, Tomlins, Whishaw, Holthouse and Wharton, with the American Dictionary of Bouvier, and the general Dictionaries of Webster and Richardson have also been referred to. A large number of new illustrations and many additional terms and phrases have been obtained from the civil law, and the best sources of English and American jurisprudence, including the well known treatises of Bracton, Britton, Littleton, Coke, Blackstone, Wooddesson, Chitty, Stephen, Kent and Story, besides the principal common law and equity Reports.

Among the more ancient of the treatises just named, that of Bracton has been quoted with perhaps the greatest frequency. No apology is believed to be necessary for this, considering the important bearing of that great work upon the theory and practice of English jurisprudence ever since it was written. A large proportion of the Latin quotations scattered through the old books, (particularly the Reports and Institutes of Sir Edward Coke,) is taken directly or indirectly from Bracton's treatise, and several important maxims of English and American law, with many technical terms still in use, may be traced to the same source. A peculiar interest, moreover, attaches to this writer from the circumstance that his is not only the first systematic law treatise of magnitude ever written in England, but was written at a time when the common law itself was in process of formation, and constitutes a principal channel through which many rules of the civil law, accompanied by more or less of its language, were engrafted upon the native jurisprudence.

Frequent reference has also been made to the nearly contemporary treatise of Britton, chiefly for illustrations of the meaning of terms and phrases in early law French, but occasionally also, as throwing valuable light upon the sense of passages or single words in Bracton. The works of these two writers, indeed, may be said to represent respectively the Latin and French of the periods at which they were written, and are chiefly relied on as authorities for that purpose. The Latin of later periods has been illustrated by references to the Register, to the principal statutes and treatises composed in that language, and to the old reports and books of practice: the French, by references to the old French Statutes, to the Year Books and later reports, and to the treatises of Littleton and other writers. The Norman Dictionary of Kelham has also been consulted, but the barbarous or corrupt forms of most of the terms given in that work, the occurrence of known typographical errors in some cases, and the general absence of reference to authority (which might furnish a ready means of correction) have prevented any very extensive use of its contents. The utility of the last named publication, it may be observed, would have been greatly enhanced, had the words it contains been accompanied in all cases by explicit references to the sources from which they were taken.

The Civil Law has contributed, it will be seen, a considerable proportion of the terms and phrases translated and explained in the course of this work. Most of these have been directly taken from the Institutes, Code, Digest, and Novels of Justinian; and the

passages in which they occur have generally been quoted and translated as furnishing the best explanations of their meaning and application. Additional illustrations have been derived from the writings of the civilians: and among these, the elementary works of Heineccius and Mackeldey, and the valuable Analysis of Hallifax have been most frequently referred to. A variety of definitions have also been extracted from the standard lexicons of Calvin, (who is mentioned by Cowell\* in terms of peculiar commendation,) Prateus, Spiegelius, Oldendorpius, and others. These civil law terms do not appear to have been hitherto presented, to any extent, in any English law dictionary. A few are to be met with in Cowell, next to none in Spelman, and those which are given in later works are taken rather from the modern civil law, than the original collections of Justinian. From the constant reference made to the latter, however, in all the modern systems, as well as in American jurisprudence, their peculiar terms as expressed in the original languages have been thought to be of sufficient general importance to justify the particular attention which has been bestowed upon them. A number of important Law maxims have also been quoted from the same sources, which are not to be found in the maxim books now in general use.

Next to the law of England, from which our own has been so extensively derived, that of Scotland is perhaps the most important to an English or American student, considered with reference to the terminology of the science. A marked peculiarity of this law, especially in its older periods, is its close adherence to the Latin in the forms of its technical terms, many of which are essentially Latin, the termination only being slightly varied; e. g. *caution, cedent, decedent, decern, decreet, dispoñe, excambion, lucrative successor, terce, transumpt, vitious intromission, &c.* The same law is valuable also from having preserved the meaning of several Saxon words and feudal terms which cannot be satisfactorily traced through the English books. These considerations will account for the particular attention paid to Scotch law terms in the following pages.

Throughout the work, it has been deemed an important part of the explanations given, to distinguish as accurately as possible between such terms and phrases as are *still in use*, and those which have become partially or entirely *obsolete*; and the same object has been kept in view in regard to such rules of law and practical proceedings as have been introduced or referred to, in the way of illustration. The proper distinction in these cases has been expressed either by the brief preliminary designation of the term, phrase or proceeding, as one "In old law," "In old practice," &c., or by compendiously noticing at the end of the definition or description, the changes by which proceedings have been abolished, laws repealed, or rules or customs abrogated. The Commentaries of Blackstone, in particular, have been compared throughout with the valuable "New Commentaries" of Mr. Serjeant Stephen, by which they have been more closely accommodated to the present state of the law in England.

In adapting the work to the uses of American readers and students, care has been taken to introduce such matter as appeared to be of the most general and permanent interest and value. To keep accurately in view the terminology applicable to the jurisprudence of each particular State, especially in its dependence on the changes now so sudden and frequent in State legislation, would seem to be scarcely attainable by any degree of attention or industry that could be devoted to the subject. The difficulties attending definition as fixed by local statute law, arising from the entire absence of any common

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\* Interpreter, ed. 1607, pref.

standard, have recently been placed in a strong light by an eminent American judge.\* The definitions given in the standard treatises and in the opinions of the bench partake of a much greater degree of uniformity, and for this reason they have been more generally quoted and relied on.

With this prefatory notice of its plan and purpose, the work is now submitted to the examination of the profession. That its execution has fallen far short of its design, is already but too apparent to the author's own observation. Of the defects that may be discovered in its pages, some seem to be inseparable from the task of first compiling any matter of the kind from sources so numerous, and scattered over so wide a field. But it is hoped that neither these nor such as may be fairly chargeable to want of judgment, care or information, will be found seriously to impair its general utility, or occasion regret for the time and labor devoted to its composition.

*New-York, Dec. 31st, 1850.*

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\* Mr. Justice Catron, in *Nelson v. Carland*, 1 *Howard's R.* 265, 271.

# EXPLANATION

## OF

### ABBREVIATIONS AND MARKS

#### USED IN THIS WORK.

a, b, in the old books, denote the first and second pages of a folio or leaf.  
 acc. according, accordingly.  
*ad fin.* (*ad finem*), at the end.  
 antepenult. before the last; last but one.  
*apud*, in; contained or quoted in.  
*arg.* (*arguendo*), in arguing; in argument.  
 b. book.  
 Belg. Dutch.  
 Brit. British or Welsh.  
 c. cap. (*caput*), chapter.  
 cc. capp. (*capita*), chapters.  
 c. ch. chap. chapter.  
 C. Chancellor.  
 C. J. Chief Justice.  
 Chart. (*charta*), charter or deed.  
 const. constitution.  
 Dan. Danish.  
 dial. dialogue.  
 diss. dissertation.  
 e. g. (*exempli gratia*), for example.  
 Eng. English.  
*et seq.* (*et sequens*); *et seqq.* (*et sequentia*), and the following.  
 fol. folio or leaf.  
 fr. (*fragmentum*), fragment.  
 Fr. French.  
 Germ. German.  
 Goth. Gothic.  
 Gr. Greek.  
 Græco-barb. barbarous Greek, Greek of the lower empire.  
 Græco-lat. Greek-Latin; essentially Greek, but in a Latin form.  
 h. t. (*hoc titulo*), under this title.  
 h. v. (*hac voce*), under this word.  
 Heb. Hebrew.  
*ibid.* (*ibidem*), in the same place.  
*Id.* (*idem*), the same.  
*Id. ibid.* (*idem ibidem*), the same in the same place.  
*in an.* (*in anno*), under the year.  
*in fin.* (*in fine*), at the end.  
*in loc.* (*in loco*), in or on the place.  
*in marg.* (*in margine*), in the margin.  
*infra*, below.  
 Ital. Italian.  
 J. Justice.  
 l. (*lex*) law.  
 L. Fr. Law-French.  
 L. Lat. Law-Latin, or low Latin.

Lat. Latin.  
 Latino-barb. barbarous Latin; Latin of the lower empire or middle ages.  
 Latino-Gr. Latin-Greek, Latin in Greek letters.  
 lib. (*liber*), book.  
 liv. (*livre*), book.  
 Lomb. Lombardian or Lombardic.  
 m. memb. (*membrana*), skin of parchment.  
 max. maxim.  
 n. num. (*numerus*), number.  
 Norm. Norman.  
 not. (*nota*), note.  
 O. Eng. old English.  
 O. Fr. old French.  
 obs. (*observatio*) observation.  
 Op. (*opera*) works.  
 par. (*pars* or *parte*), part.  
 par. paragraph.  
*passim*, every where; in various places.  
 Pat. Patent.  
 per, by.  
*per toi.* (*per totum*), throughout.  
 pl. placitum.  
 pr. (*principium*), beginning.  
 proem. (*proæmium*), preface or introduction.  
 q. v. (*quod vide*), which see, (alluding to one.)  
 qq. v. (*quæ vide*), which see, (alluding to several.)  
 qu. (*quæstio*), question.  
 qu. (*quære*), inquire; a note of doubt.  
 R. Reports.  
 reg. (*regula*), rule.  
 rot. (*rotulus*, or *rotulo*), roll.  
 rott. (*rotuli*, or *rotulis*), rolls.  
 s. sect. section.  
 Sax. Saxon.  
 Span. Spanish.  
 ss. sections.  
 st. stat. statute.  
*supra*, above.  
 t. tit. (*titulus*), title.  
 Teut. Teutonic, or old German.  
 titt. tittt. (*tituli*), titles.  
 tr. tract. (*tractatus*), tract or treatise.  
*ub. sup.* (*ubi supra*), where above quoted; in the place or passage last cited.  
 ult. (*ultimus*, *ultimo*), the last.  
 vet. (*vetus*) old.  
 voc. (*voce* or *vocabulo*), word; in or on the word.  
 vocc. (*vocibus* or *vocabulis*), words; in or on the words.

Brackets, [ ] are used to distinguish such matter as is added or inserted by the author in definitions and translations, for the purpose of clearer explanation of the meaning; and also such occasional emendations of passages in old authors as seemed to be required by the context. The marginal pages of authorities referred to, are sometimes distinguished in the same manner.

An asterisk, \* at the end of a definition, denotes that it is of the author's composition. The same mark prefixed to a reference, denotes that the definition or other matter is not literally quoted, but made up, or substantially extracted from the authorities referred to. The same mark, prefixed to the number of a page, denotes a marginal paging.

A dash, — is used to separate in the same paragraph, definitions given by different authorities, where the term defined has but one meaning: definitions which express *distinct* meanings, being arranged in distinct paragraphs. The same mark is used to separate the definitions from the other matter which has been explained in the preface.

**Law Maxims** are invariably distinguished by the type.



# ABBREVIATIONS

OF

## REFERENCES, USED IN THIS WORK.

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- A. Gell. Noct. Att.* Auli Gellii Noctes Attion.  
*A. K. Marsh.* A. K. Marshall's Kentucky Reports.  
*Abb. on Ship.* Abbott on Shipping.  
*Adam's Rom. Ant.* Adam's Roman Antiquities.  
*Ad. on Eject.* Adams on Ejectment.  
*Ad. & El.* Adolphus and Ellis' Reports.  
*Ad. & El. N. S.* Adolphus and Ellis' Reports, New Series.  
*Addams' R.* Addams' Reports.  
*Amb.* Ambler's Reports.  
*Anderson.* Anderson's Reports.  
*Ang. and Ames on Corp.* Angell and Ames on Corporations.  
*Ang. on Limit.* Angell on Limitation.  
*Ang. on Water courses.* Angell on Water courses.  
*Anstr.* Anstruther's Reports.  
*Arch. Pl. & Evid.* Archbold's Pleading and Evidence.  
*Arch. Landl. & Ten.* Archbold's Landlord and Tenant.  
*Arch. N. Prius.* Archbold's Nisi Prius.  
*Arch. N. Pract.* Archbold's New Practice.  
*Arch. Pr.* Archbold's Practice.  
*Arn. on Ins.* Arnould on Insurance.  
*Art. sup. Chart.* Articuli super Chartas.  
*Artic. Cleri.* Articuli Cleri.  
*Atherley on Mar. Sett.* Atherley on Marriage Settlements.  
*Assis. de Jerus.* Assises de Jerusalem.  
*Atk.* Atkyn's Reports.  
*Ayl. Pand.* Ayliffe's Pandect.  
*Ayl. Parerg.* Ayliffe's Parergon.  
*Azuni's Marit. Law.* Azuni's Maritime Law.  
*B. & A. or B. & Ald.* Barnewall and Alderson's Reports.  
*B. & Ad.* Barnewall and Adolphus' Reports.  
*B. & C.* Barnewall and Cresswell's Reports.  
*B. & P.* Bosanquet and Puller's Reports.  
*B. Monroe's R.* B. Monroe's (Ky.) Reports.  
*Bab. on Auct.* Babington on Auctions.  
*Bac. Abr.* Bacon's Abridgment.  
*Bac. Max.* Bacon's Maxims.  
*Bac. Read. Us.* Bacon's Reading on the Statute of Uses.  
*Bailey's R.* Bailey's (S. C.) Reports.  
*Baldw. R.* Baldwin's Circuit Court Reports.  
*Barbour's Chanc. Pr.* Barbour's Chancery Practice.  
*Barr. Obs. Stat.* Barrington's Observations on the Statutes.  
*Bell's Com.* Bell's Commentaries on the Law of Scotland.  
*Bell's Dict.* Bell's Dictionary of the Law of Scotland.  
*Benedict's Adm. Pr.* Benedict's Admiralty Practice.  
*Benl.* Benloe's Reports.  
*Best on Evid.* Best on Evidence.  
*Best on Pres.* Best on Presumptions.  
*Bing. R.* Bingham's Reports.  
*Bing. N. C.* Bingham's New Cases.  
*Binn. or Binney's R.* Binney's Reports.  
*Bl. Com.* Blackstone's Commentaries.  
*Bl. R.* Sir W. Blackstone's Reports.  
*Blackf. R.* Blackford's (Indiana) Reports.  
*Bligh's R.* Bligh's Reports (House of Lords.)  
*Blount.* Blount's Nomo-lexicon.  
*Bohun's Inst. Leg.* Bohun's Institutio Legalis.  
*Boote's Hist.* Boote's Historical Treatise of a Suit at Law.  
*Bos. & Pull.* Bosanquet and Puller's Reports.  
*Bouvier.* Bouvier's American Law Dictionary.  
*Bract.* Bracton de Legibus et Consuetudinibus Angliæ.  
*Branch's Pr.* Branch's Principia Legis et Equitatis.  
*Brande.* Brande's Dictionary of Science, &c.  
*Britt.* Britton.  
*Bro. Abr.* Brooke's Abridgment.  
*Bro. C. C.* Brown's Chancery Cases.  
*Bro. Civ. Law.* Browne's Civil and Admiralty Law.  
*Bro. P. C.* Brown's Parliamentary cases.  
*Brock. R.* Brockenborough's Reports.  
*Brod. & Bing.* Broderip and Bingham's Reports.  
*Broom's Max.* Broom's Legal Maxims.  
*Browne on Act.* Browne on Actions.  
*Bull. N. P.* Buller's Nisi Prius.

- Bulstr.* Bulstrode's Reports.  
*Burge on Suret.* Burge on Suretyship.  
*Burge Col. & For. Law.* Burge on Colonial and Foreign Law.  
*Burn's Eccl. Law.* Burn's Ecclesiastical Law.  
*Burr.* Burrow's Reports.  
*Burr. Pr.* Burrill's Practice.  
*Burton's Real Prop.* Burton's Law of Real Property.  
*Butler's Co. Litt.* Butler's Notes to Coke Littleton.  
*Bynk. Quæst. Jur. Pub.* Bynkershoek's Quæstiones Juris Publici.  
*C. & F.* Clarke and Finelly's Reports.  
*C. & K.* Carrington and Kirwan's Reports.  
*C. & M.* Carrington and Marshman's Reports.  
*C. & P.* Carrington and Payne's Reports.  
*Caines' R.* Caines' Reports.  
*Call's R.* Call's (Virginia) Reports.  
*Calv. Lex. or Calv. Lex. Jur.* Calvini Lexicon Juridicum.  
*Calv. on Part.* Calvert on Parties to Suits in Equity.  
*Camd. Brit.* Camden's Britannia.  
*Campb.* Campbell's Reports.  
*Car. & M.* Carrington and Marshman's Reports.  
*Cart. de Forest.* Carta de Foresta.  
*Carth.* Carthew's Reports.  
*Cas. temp. Hardw.* Cases tempore Hardwicke.  
*Cas. temp. Talb.* Cases tempore Talbot.  
*Chan. Cas.* Chancery Cases, or Cases in Chancery.  
*Chanc. Prec.* Chancery Precedents.  
*Chart. Forest.* Charta de Foresta.  
*Chart. Civit. Lond.* Charta Civitatis Londoni.  
*Chitt. Arch. Pr.* Chitty's Archbold's Practice.  
*Chitt. on Bills.* Chitty on Bills.  
*Chitt. Bl. Com.* Chitty's Blackstone's Commentaries.  
*Chitt. Contr.* Chitty on Contracts.  
*Chitt. Gen. Pr.* Chitty's General Practice.  
*Chitt. Pl.* Chitty on Pleading.  
*Civ. Code Louis.* Civil Code of Louisiana.  
*Co.* Coke's Reports.  
*Co. Entr.* Coke's Entries.  
*Co. Litt.* Coke on Littleton.  
*Cod.* Codex Justiniani.  
*Cod. Theodos.* Codex Theodosianus.  
*Code Civ.* Code Civil.  
*Code Nap.* Code Napoleon.  
*Cole on Crim. Inform.* Cole on Criminal Informations.  
*Com.* Comyn's Reports.  
*Com. Dig.* Comyn's Digest.  
*Cond. R.* Condensed Reports.  
*Conf. Chart.* Confirmatio Chartarum.  
*Conkl. Treat.* Conkling's Treatise on Jurisdiction.  
*Conn. R.* Connecticut Reports.  
*Consol. del Mare.* Consolato del Mare.  
*Cooke on Def.* Cooke's Law of Defamation.  
*Cooke's R.* Cooke's (Tenn.) Reports.  
*Coop. Just. Inst.* Cooper's Justinian's Institutes.  
*Coote on Mortg.* Coote on Mortgages.  
*Coventry on Conv. Evid.* Coventry on Conveyancer's Evidence.  
*Cowell.* Cowell's Interpreter.  
*Cowp.* Cowper's Reports.  
*Cowen's R.* Cowen's Reports.  
*Crabb's Hist.* Crabb's History of English Law.  
*Crabb's Real Prop.* Crabb's Law of Real Property.  
*Craig or Crag. Jus. Feud.* Craig's Jus Feudale.  
*Cranch R.* Cranch's Reports.  
*Cro. Car.* Croke's (Charles) Reports.  
*Cro. El.* Croke's (Elizabeth) Reports.  
*Cro. Jac.* Croke's (James) Reports.  
*Crompt. Jurisd.* Crompton's Jurisdiction of Courts.  
*Crompt. & Mees.* Crompton and Meeson's Reports.  
*Cr. Mees. & Rosc.* Crompton, Meeson and Roscoe's Reports.  
*Cruise Dig.* Cruise's Digest.  
*Curteis R.* Curteis' Reports.  
*D. & R.* Dowling and Ryland's Reports.  
*Dallas' R.* Dallas' Reports.  
*Dalrymple Feud.* Dalrymple on Feudal Property.  
*Dane's Abr.* Dane's Abridgment.  
*Daniell's Chanc. Pr.* Daniell's Chancery Practice.  
*Dav.* Davies' R. Davies' Reports.  
*Decret. Childerb. ad L. Salic.* Decreta Childerberti ad Legem Salicam.  
*Denio's R.* Denio's (New-York) Reports.  
*Dev. & Bat.* Devereux and Battle's (N. C.) Reports.  
*Dial. de Scacc.* Dialogus de Scaccario.  
*Dickens' R.* Dickens' Reports.  
*Dig.* Digestum or Digesta. The Digest or Digests of Justinian.  
*Diss. ad Flat.* Selden's Dissertatio ad Flatam.  
*Doct. and Stud.* Doctor and Student.  
*Domat.* Domat's Civil Law.  
*Domesd.* Domesday Book.  
*Dougl.* Douglas' Reports.  
*Dowl. & Ryl.* Dowling and Ryland's Reports.  
*Dow's P. C.* Dow's Parliamentary Cases.  
*Dudley's R.* Dudley's (South Carolina) Reports.  
*Duer on Ins.* Duer on Insurance.  
*Dugd. Orig. Jur.* Dugdale's Origines Juridicales.  
*Duke Charit. Us.* Duke on Charitable Uses.  
*Durand. Spec. Jur.* Durandi Speculum Juris.  
*Dyer.* Dyer's Reports.  
*East.* East's Reports.  
*Eden's Bankr. Law.* Eden on the Bankrupt Law.  
*Edw. Adm. R.* Edwards' Admiralty Reports.  
*Edw. Ch. R.* Edwards' (New-York) Chancery Reports.  
*Edw. on Part.* Edwards on Parties.  
*Edw. on Rec.* Edwards on Receivers.  
*Eq. Cas. Abr.* Equity Cases Abridged.  
*Erek. Inst.* Erskine's Institute of the Laws of Scotland.  
*Erek. Pr.* Erskine's Principles of the Law of Scotland.  
*Esp. N. P. R.* Espinasse's Nisi Prius Reports.  
*Espirit des Loix.* Montesquieu's Spirit of Laws.  
*F. N. B.* Fitzherbert's Natura Brevium.  
*Fearne Cont. Rem.* Fearne on Contingent Remainders.  
*Feud. Lib.* Feudorum Liber.  
*Finch L.* Finch's Law.  
*Fitzh. Just.* Fitzherbert's Justice.  
*Fleta.* Fleta, seu Commentarius Juris Anglici.  
*Flor. Wigorn.* Florentius Wigornensis, Florence of Worcester.  
*Fonbl. Eq.* Fonblanque on Equity.  
*Forbes' Inst.* Forbes' Institutes of the Law of Scotland.  
*Formul. Solen.* Formule Solemnnes.  
*Fortesc. de L. L. Angl.* Fortescue de Laudibus Legum Angliæ.  
*Fost. C. L.* Foster's Crown Law.  
*Freem.* Freeman's Reports.  
*Gaius.* Gaius' Institutes.  
*Gale & Dav.* Gale and Davison's Reports.

*Gale & Watll.* Gale and Whatley's Law of Easements.  
*Gall. or Gallison's R.* Gallison's Reports.  
*Gerv. Dorebern.* Gervase of Canterbury.  
*Gibbon's Rom. Emp.* Gibbon's Decline and Fall of the Roman Empire.  
*Gib. Cod.* Gibson's Codex.  
*Gib. C. Pleas.* Gilbert's History and Practice of the Court of Common Pleas.  
*Gib. For. Rom.* Gilbert's Forum Romanum.  
*Gibb. Ten.* Gilbert on Tenures.  
*Gilman's R.* Gillman's (Ill.) Reports.  
*Glanv.* Glanville, De Legibus et Consuetudinibus Regni Angliæ.  
*Godb.* Godbolt's Reports.  
*Godolph.* Godolphin's Orphan's Legacy.  
*Gord. Dig.* Gordon's Digest of the Laws of the United States.  
*Gould's Pl.* Gould on Pleading.  
*Gow on Parta.* Gow on Partnership.  
*Grady on Fixt.* Grady on Fixtures.  
*Grak. Pr.* Graham's Practice.  
*Grand Coust. Norm.* Grand Coustumier of Normandy.  
*Gray's Chanc. Pr.* Gray's Chancery Practice.  
*Greenl. Cruise Dig.* Greenleaf's Cruise's Digest.  
*Greenl. on Evid.* Greenleaf on Evidence.  
*Green's R.* Green's (New-Jersey) Reports.  
*Greg. Turon.* Gregory of Tours.  
*Grot. de Æquit.* Grotius de Æquitatē.  
*Grot. de J. B. et P.* Grotius de Jure Belli et Pacis.  
*H. Bl.* Henry Blackstone's Reports.  
*Hagg. Eccl. R.* Haggard's Ecclesiastical Reports.  
*Hal. P. C.* Hale's Pleas of the Crown.  
*Hallam's Mid. Ag.* Hallam's History of the Middle Ages.  
*Hallifax Anal.* Hallifax's Analysis of the Roman Civil Law.  
*Halst. R.* Halstead's (N. J.) Reports.  
*Ham. N. P.* Hammond's Nisi Prius.  
*Hardr.* Hardree's Reports.  
*Hargr. Co. Litt.* Hargrave's Notes to Coke Littleton.  
*Hargr. L. Tr.* Hargrave's Law Tracts.  
*Harper's R.* Harper's (S. C.) Reports.  
*Harr. Dig.* Harrison's Digest.  
*Harr. & Gill.* Harris and Gill's (Maryland) Reports.  
*Harr. & Johns.* Harris and Johnson's (Maryland) Reports.  
*Harr. & McH.* Harris and McHenry's (Md.) Reports.  
*Hawk. P. C.* Hawkins' Pleas of the Crown.  
*Heinec. Elem. Jur. Civ.* Heineccii Elementa Juris Civilis.  
*Heinec. Elem. Jur. Camb.* Heineccii Elementa Juris Cambialis.  
*Hen. & Munf.* Hening and Munford's (Va.) Reports.  
*Hengh. Mag.* Hengham's Summa Magna.  
*Het.* Hetley's Reports.  
*Hickes, Thes.* Hickes' Thesaurus.  
*Hilliard's Real Prop.* Hilliard's Abridgment of the American Law of Real Property.  
*Hill's R.* Hill's (New-York) Reports.  
*Hill's R.* Hill's (South Carolina) Reports.  
*Hob.* Hobart's Reports.  
*Hoffm. Mast. in Chanc.* Hoffman's Master in Chancery.  
*Holt R.* Holt's Reports.  
*Holthouse.* Holthouse's Law Dictionary.  
*Hottom. in Verb. Feud.* Hottomannus in Verbis Feudalibus.  
*Hoved. Ann.* Hoveden's Annals.  
*Howard's R.* Howard's Reports (S. C. U. S.)

*Hubback's Ev. of Success.* Hubback's Evidence of Succession.  
*Hughes' Eq. Drafts.* Hughes' Equity Draftsman.  
*Hughes on Ins.* Hughes on Insurance.  
*Humph. R.* Humphrey's (Tenn.) Reports.  
*Ingulph. Hist. Croyl.* Ingulphi Historia Croylandiæ.  
*Inst.* Institutes of Justinian.  
*Inst.* Institutes of Lord Coke.  
*Iredell's R.* Iredell's (N. C.) Reports.  
*J. J. Marsh. R.* J. J. Marshall's (Kentucky) Reports.  
*Jac. & Walk.* Jacob and Walker's Reports.  
*Jac. Sea Laws.* Jacobsen's Sea Laws.  
*Jacob.* Jacob's Law Dictionary.  
*Jarm. on Wills.* Jarman on Wills.  
*Jenk. Cent.* Jenkins' Centuriis or Reports.  
*Johns. Cas.* Johnson's Cases.  
*Johns. Ch. R.* Johnson's Chancery Reports.  
*Johns. R.* Johnson's Reports.  
*Jones on Bailm.* Jones on Bailment.  
*Jornand. de Reb. Get.* Jornandes De Rebus Geticiis.  
*Joy on Conf.* Joy on the Admissibility of Confessions.  
*Joy on Evid.* Joy on the Evidence of Accomplices.  
*Kames' Eq.* Kames' Principles of Equity.  
*Kaufm. Mackeld. Civ. Law.* Kaufman's edition of Mackeldey's Civil Law.  
*Keb.* Keble's Reports.  
*Keilw.* Keilway's Reports.  
*Kelham.* Kelham's Norman Dictionary.  
*Kelly's R.* Kelly's (Geo.) Reports.  
*Kennett's Par. Ant.* Kennett's Parochial Antiquities.  
*Kennett's Gloss.* Kennett's Glossary.  
*Kent's Com.* Kent's Commentaries.  
*Kitch.* Kitchin of Courts.  
*L. Alam.* Law of the Alemanni.  
*L. Baiwar. or Boior.* Law of the Bavarians.  
*L. Ripuar.* Law of the Ripurians.  
*L. Salic.* Salic Law.  
*L. Fr. Dict.* Law French Dictionary.  
*L. Lat. Dict.* Law Latin Dictionary.  
*LL. Aluredi.* Laws of Alfred.  
*LL. Athelst.* Laws of Athelstan.  
*LL. Burgund.* Laws of the Burgundians.  
*LL. Canuti R.* Laws of King Canute.  
*LL. Edw. Conf.* Laws of Edward the Confessor.  
*LL. Gul. Conq.* Laws of William the Conqueror.  
*LL. Hen. I.* Laws of Henry I.  
*LL. Ina.* Laws of Ina.  
*LL. Longob.* Laws of the Lombards.  
*LL. Malcolm. R. Scot.* Laws of Malcolm King of Scotland.  
*LL. Neapolit.* Laws of Naples.  
*LL. Will. Noth.* Laws of William the Bastard.  
*LL. Wisigothor.* Laws of the Visigoths.  
*Lamb. Archæon.* Lambard's Archæionomia.  
*Lamb. Eiren.* Lambard's Eirenarcha.  
*Lamb. Explic.* Lambard's Explication.  
*Latch.* Latch's Reports.  
*Ld. Raym.* Lord Raymond's Reports.  
*Lee on Abstr.* Lee on Abstracts of Title.  
*Lev.* Levinz' Reports.  
*Lewis on Perp.* Lewis on Perpetuity.  
*Lewis'. U. S. Crim. Law.* Lewis' United States Criminal Law.  
*Lib. Feud.* Liber or Libri Feudorum; the Book of Feuds.  
*Lib. Nig. Scacc.* Liber Niger Scaccarii; Black Book of the Exchequer.  
*Lib. Rames.* Liber Ramesiensis; Book of Ramsey.

- Lib. Rub. Scacc.* Liber Ruber Scaccarii: Red Book of the Exchequer.  
*Lill. Abr.* Lilly's Abridgment.  
*Litt.* Littleton's Tenures.  
*Litt. R.* Littleton's Reports.  
*Lofft.* Lofft's Reports.  
*Louis. R.* Louisiana Reports.  
*Lutw.* Lutwyche's Reports.  
*Lyndew. Prov.* Lyndwode's Provinciale.  
*M. & G.* Manning and Granger's Reports.  
*M. G. & S.* Manning, Granger & Scott's Reports.  
*M. & K.* Mylne & Keen's Reports.  
*M. & M.* Moody and Malkin's Reports.  
*M. & P.* Moore and Payne's Reports.  
*M. & S.* Maule and Selwyn's Reports.  
*M. & W.* Meeson and Welsby's Reports.  
*McCord's R.* McCord's (S. C.) Reports.  
*Mackeld. Civ. Law.* Mackeldey's Civil Law.  
*Macph. on Inf.* Macpherson on Infants.  
*Macq. Hus. & W.* Macqueen on Husband and Wife.  
*Madd. Chan.* Maddock's Chancery.  
*Mad. Form. Angl.* Madox's Formulæ Anglicanum.  
*Mad. Hist. Exch.* Madox' History of the Exchequer.  
*Mag. Chart.* Magna Charta.  
*Mag. Rot. Pip.* Magnus Rotulus Pipe; Great Roll of the Pipe.  
*Man. & Gr.* Manning and Granger's Reports.  
*Man. Gr. & Scott.* Manning, Granger and Scott's Reports.  
*Manwood.* Manwood's Forest Law.  
*Mans. on Dem.* Mansel on Demurrer.  
*Marculf. Form.* Marculf's Formulæ.  
*Marsh. on Ins.* Marshall on Insurance.  
*Martin's (La.) R.* Martin's Louisiana Reports.  
*Maro. Leg. Bibl.* Marvin's Legal Bibliography.  
*Mascard. de Prob.* Mascardus de Probationibus.  
*Mason's R.* Mason's Reports.  
*Mass. R.* Massachusetts Reports.  
*Mat. Par.* Matthew Paris.  
*Mees. & W.* Meeson and Welsby's Reports.  
*Menoch. de Præs.* Menochius de Præsumptionibus.  
*Merivale.* Merivale's Reports.  
*Merl. Repert.* Merlin's Repertoire.  
*Metcalf's R.* Metcalf's Reports.  
*Miller's Eq. Mortg.* Miller's Law of Equitable Mortgages.  
*Mirr.* Mirror of Justices.  
*Mitford's Ch. Pl.* Mitford's Chancery Pleading.  
*Mod.* Modern Reports.  
*Molloy de Jur. Mar.* Molloy de Jure Maritimo.  
*Mon. Angl.* Monasticon Anglicanum.  
*Moo. & Mulk.* Moody and Malkin's Reports.  
*Moore.* J. B. Moore's Reports.  
*Moore & P.* Moore and Payne's Reports.  
*Moore & S.* Moore and Scott's Reports.  
*Murat. Antiq. Med. Ævi.* Muratori's Antiquitates Medii Ævi.  
*N. Hamp. R.* New Hampshire Reports.  
*N. Y. R. L.* New-York Revised Laws (ed. 1813.)  
*N. Y. Rev. St.* New-York Revised Statutes.  
*Nev. & Man.* Neville and Manning's Reports.  
*Nev. & P.* Neville and Perry's Reports.  
*New R.* New Reports.  
*Nov.* Novellæ, Novels.  
*Noy's Max.* Noy's Maxims.  
*O. N. B. or Old Nat. Brev.* Old Natura Brevium.  
*O'Brien's Mil. Law.* O'Brien's Military Law.  
*Ohio R.* Ohio Reports.  
*Onuphr. de Interp. Voc. Eccles.* Onuphrius de Interpretatione Vocum Ecclesiæ.  
*Ought.* Oughton's Ordo Judiciorum.  
*Owen.* Owen's Reports.  
*Owen on Bank.* Owen on Bankruptcy.  
*P. Wms.* Peere Williams' Reports.  
*Paige's R.* Paige's Chancery Reports.  
*Paley on Ag.* Paley on Agency.  
*Palg. Rise, &c.* Palgrave's Rise and Progress of the English Commonwealth.  
*Palm.* Palmer's Reports.  
*Par. Ant.* Parochial Antiquities.  
*Park on Ins.* Park on Insurance.  
*Peake's Evid.* Peake on Evidence.  
*Penn. Law Journ.* Pennsylvania Law Journal.  
*Penn. R.* Pennsylvania Reports.  
*Penn. St. R.* Pennsylvania State Reports.  
*Perk.* Perkins' Conveyancing.  
*Pet. Adm. Dec.* Peters' Admiralty Decisions.  
*Peters' R.* Peters' Reports (S. C. U. S.)  
*Phill. Evid.* Phillips on Evidence.  
*Phill. Ins.* Phillips on Insurance.  
*Phill. Pat.* Phillips on Patents.  
*Phillim. Dom.* Phillimore on Domicil.  
*Pick. R.* Pickering's Reports.  
*Pitisc. Lex.* Pitisci Lexicon.  
*Pitm. Princ. and Sur.* Pitman on Principal and Surety.  
*Plac. Abbrev.* Placitorum Abbreviatio.  
*Plowd.* Plowden's Commentaries or Reports.  
*Porter's R.* Porter's (Ala.) Reports.  
*Poth. Obl.* Pothier on Obligation (transl.)  
*Poth. Contr. Sale.* Pothier on the Contract of Sale (transl.)  
*Pow. on Dev.* Powell on Devises.  
*Prest. Est.* Preston on Estates.  
*Prest. Abstr.* Preston on Abstracts of Title.  
*Pulling Merc. Acc.* Pulling on Mercantile Accounts.  
*Purdon's Dig.* Purdon's (Pa.) Digest.  
*Q. B. or Q. B. R.* Queen's Bench Reports. The same with *Ad. & El. N. S.*  
*Quon. Attach.* Quoniam Attachiamenta.  
*R. & M.* Russell and Mylne's Reports.  
*R. & M. C. C.* Ryan and Moody's Crown Cases.  
*R. & R. C. C.* Russell and Ryan's Crown Cases.  
*Rand. R.* Randolph's (Va.) Reports.  
*Ranulph. Cestr.* Ranulph of Chester.  
*Rawle Const.* Rawle on the Constitution.  
*Rawle's R.* Rawle's (Pa.) Reports.  
*Reeves' Hist. Eng. Law.* Reeves' History of the English Law.  
*Reg. Brev.* Registrum Brevium.  
*Reg. Jud.* Registrum Judiciale.  
*Reg. Maj.* Regiam Majestatem.  
*Reg. Orig.* Registrum Originale.  
*Rob. Adm. R.* Robinson's Admiralty Reports.  
*Rob. Charles V.* Robertson's History of the Reign of Charles V.  
*Rocc. de Nav. et Nau.* Roccus de Navibus et Naulo.  
*Roll. or Ro. Abr.* Rolle's Abridgment.  
*Roll. R.* Rolle's Reports.  
*Rop. Husb. & W.* Roper on Husband and Wife.  
*Rop. on Leg.* Roper on Legacies.  
*Rosc. Crim. Ev.* Roscoe on Criminal Evidence.  
*Rosc. Real Act.* Roscoe on Real Actions.  
*Russ.* Russell's Reports.  
*Russ. & M.* Russell and Mylne's Reports.  
*Russ. on Crim.* Russell on Crimes and Misdemeanors.  
*Russ. on Fact.* Russell on Factors.  
*Russ. & Ry. C. C.* Russell and Ryan's Crown Cases.  
*Ruth. Inst.* Rutherford's Institutes.  
*Ry. & Mo. C. C.* Ryan and Moody's Crown Cases.  
*S. Car. Rep.* South Carolina Reports.  
*S. & R.* Sergeant and Rawle's (Pa.) Reports.

- Salk.** Salkeld's Reports.  
**Sand. Us. & T.** Sanders on Uses and Trusts.  
**Sandf. R.** Sandford's (N. Y.) Chancery Reports.  
**Saund.** Saunder's Reports.  
**Saund. Pl. & Ev.** Saunders on Pleading and Evidence.  
**Sav.** Savile's Reports.  
**Sav. Hist. Rom. Law.** Savigny's History of the Roman Law.  
**Say.** Sayer's Reports.  
**Scammon's R.** Scammon's (Ill.) Reports.  
**Sch. & Lef.** Schoales and Lefroy's Reports.  
**Schult. Aq. R.** Schultes on Aquatic Rights.  
**Scott's R.** Scott's Reports.  
**Sedgw. on Dam.** Sedgwick on the Measure of Damages.  
**Seld. Mare Claus.** Selden's Mare Clausum.  
**Seld. Tit. of Hon.** Selden's Titles of Honor.  
**Selw. N. P.** Selwyn's Nisi Prius.  
**Serg. & Rawle.** Sergeant and Rawle's (Pa.) Reports.  
**Sewell's Sher.** Sewell's Law of Sheriff.  
**Shelf. Marr. & Div.** Shelford on Marriage and Divorce.  
**Shelf. Mortm.** Shelford on Mortmain.  
**Shep. Touch.** Sheppard's Touchstone.  
**Shepl. R.** Shepley's (Maine) Reports.  
**Show.** Shower's Reports.  
**Sid.** Siderfin's Reports.  
**Sim. & Stu.** Simon and Stuart's Reports.  
**Skene de Verb. Sign.** Skene de Verborum Significatione.  
**Smith on Contr.** Smith on Contracts.  
**Smith's Lead. Cas.** Smith's Leading Cases.  
**Smith's Merc. Law.** Smith's Mercantile Law.  
**Som. on Gav.** Somner's Law of Gavelkind.  
**Spelman.** Spelman's Glossary.  
**Spence's Chancery.** Spence on the Equitable Jurisdiction of the Court of Chancery.  
**Stair's Inst.** Stair's Institutions of the Law of Scotland.  
**Stark. Ev.** Starkie on Evidence.  
**Stark. Sland.** Starkie on Slander.  
**Stat. Gloc.** Statute of Gloucester.  
**Stat. Marl.** Statute of Marlbridge.  
**Stat. Mert.** Statute of Merton.  
**Stat. Mod. Lev. Fin.** Statute Modus Levandi Fines.  
**Stat. Westm.** Statute of Westminster.  
**Staudf. Pl. Cor.** Staudford's Placita Coronæ.  
**Stephen's Com.** Stephen's New Commentaries on the Laws of England.  
**Steph. Crim. Law.** Stephen's Criminal Law.  
**Steph. Pl.** Stephen on Pleading.  
**Stev. on Av.** Stevens on Average.  
**Stev. & Ben. on Av.** Stevens and Benecke on Average.  
**Stiles.** Stiles' Reports.  
**Stock N. Comp. Ment.** Stock on Non Compotes Mentis.  
**Story on Ag.** Story on Agency.  
**Story on Bailm.** Story on Bailment.  
**Story Conf. Laws.** Story on the Conflict of Laws.  
**Story on Const.** Story on the Constitution of the United States.  
**Story's Eq. Jur.** Story's Equity Jurisprudence.  
**Story's Eq. Pl.** Story on Equity Pleading.  
**Story on Notes.** Story on Promissory Notes.  
**Story on Partn.** Story on Partnership.  
**Story's R.** Story's Reports.  
**Stra.** Strange's Reports.  
**Sugd. Prop.** Sugden's Law of Property.  
**Sugd. Vend.** Sugden on Vendors.  
**Sumner's R.** Sumner's Reports.  
**Swanet.** Swanston's Reports.  
**Swinb. on Wills.** Swinburne on Wills.  
**T. & G.** Tyrwhitt and Granger's Reports.  
**T. & P.** Turner and Phillips' Reports.  
**T. Jon.** Sir Thomas Jones' Reports.  
**T. R.** Term Reports.  
**T. & R.** Turner and Russell's Reports.  
**T. Raym.** Sir Thomas Raymond's Reports.  
**Tam. on Ev.** Tamlyn on Evidence.  
**Taunt.** Taunton's Reports.  
**Tayl. Civ. Law.** Taylor's Elements of the Civil Law.  
**Term R.** Term Reports.  
**Thach. Crim. Cases.** Thacher's Criminal Cases.  
**Thel. Dig.** Theloall's Digest.  
**Tidd's Pr.** Tidd's Practice.  
**Toll. Ex.** Toller's Law of Executors and Administrators.  
**Tomlins.** Tomlins' Law Dictionary.  
**Town. Pl.** Townsend's Preparative to Pleading.  
**Trye's Jus Filiz.** Trye's Jus Filizarii.  
**Turn. R.** Turner's Reports.  
**Turn. & Phill.** Turner and Phillips' Reports.  
**Turn. & Rus.** Turner and Russell's Reports.  
**Tyrw.** Tyrwhitt's Exchequer Reports.  
**Tyrw. & Gr.** Tyrwhitt and Granger's Reports.  
**Tytl. Mil. Law.** Tylder on Military Law.  
**U. S. Dig.** United States Digest.  
**V. & B.** Vesey and Beames' Reports.  
**Vattel.** Vattel's Law of Nations.  
**Vaugh.** Vaughan's Reports.  
**Vent.** Ventris' Reports.  
**Vermont R.** Vermont Reports.  
**Vern.** Vernon's Reports.  
**Ves.** Vesey's Reports.  
**Ves. Jr.** Vesey Junior's Reports.  
**Ves. & Bea.** Vesey and Beames' Reports.  
**Vet. Na. Br.** Old Natura Brevium.  
**Vin. Abr.** Viner's Abridgment.  
**Vinn. ad Inst.** Vinnius' Commentary on the Institutes of Justinian.  
**W. Jon.** Sir William Jones' Reports.  
**Ward on Leg.** Ward on Legacies.  
**Ware's R.** Ware's District Court Reports.  
**Wash. C. C. R.** Washington's Circuit Court Reports.  
**Watk. Conv.** Watkins on Conveyancing.  
**Wats. Arb.** Watson on Arbitration.  
**Watts' R.** Watt's (Pa.) Reports.  
**Watts & Serg.** Watts and Sergeant's (Pa.) Reports.  
**Welsb. H. & Gord.** Welsby, Hurlstone & Gordon's Reports.  
**Wendell's R.** Wendell's (N. Y.) Reports.  
**Wentw. Off. Ex.** Wentworth's Office of Executor.  
**Wentw. Pl.** Wentworth's Pleadings.  
**West's Symb.** West's Symboleography.  
**Whart. Am. Crim. Law.** Wharton's American Criminal Law.  
**Whart. Lex.** Wharton's Law Lexicon.  
**Whart. Prec. of Indict.** Wharton's Precedents of Indictments.  
**Whart. R.** Wharton's (Pa.) Reports.  
**Wheat. or Wheaton's R.** Wheaton's Reports. (S. C. U. S.)  
**Wheat. on Cap.** Wheaton on Captures.  
**Wheat. Intern. Law.** Wheaton's International Law.  
**Whishaw.** Whishaw's Law Dictionary.  
**White's Eq. Cas.** White's Leading Cases in Equity.  
**White's Recop.** White's New Recopilacion of the Laws of Spain and the Indies.  
**Wilc. on Cons.** Wilcock on the Office of Constable.  
**Wilc. Mun. Cor.** Wilcock on Municipal Corporations.

- Wilk. Leg. Ang. Sax.* Wilkin's *Leges Anglo-Saxonice*.  
*Willes' R.* Willes' Reports.  
*Williams' Exec.* Williams on Executors.  
*Wills Circ. Ev.* Wills on Circumstantial Evidence.  
*Wils.* Wilson's Reports.  
*Wing. Max.* Wingate's Maxims.  
*Woodb. & Min.* Woodbury and Minot's Reports.  
*Wood's Inst.* Wood's Institutes.  
*Wooddes. Lect.* Wooddemon's Lectures.
- Wordsw. J. Stock Co.* Wordsworth on Joint Stock Companies.  
*Worth. on Jur.* Worthington on Juries.  
*Wright Ten.* Wright on Tenures.  
*Wyatt's Prac. Reg.* Wyatt's Practical Register.  
*Y. B. or Yearb.* Yearbook.  
*Y. & C.* Younge and Collyer's Exchequer Reports.  
*Y. & J.* Younge and Jervis' Exchequer Reports.  
*Yelv.* Yelverton's Reports.  
*Yerger's R.* Yerger's (Tenn.) Reports.

# LAW DICTIONARY

AND

**G L O S S A R Y .**





A

# LAW DICTIONARY

AND

## GLOSSARY.

A

A. Lat. From. *A datū* ; from the date. 2 *Salk.* 413.

By. *A non iudice* ; by one not a judge. *Bract.* fol. 205 a.

On, at. *A latere* ; on the side, collaterally. *Id.* fol. 62 b.

Of, in. See *A consiliis*.

Used also, anciently, in the composition of official titles ; as *a cancellis*, *a consiliis*, *a responsis*, (qq.v.) in the sense of relation, position, charge, or duty.

A. L. Fr. Of. *A fine force* ; of necessity. *Litt.* sect. 455.

At. *A la requeste des prelates, counts et barons*, *a son parlement a Westm. &c.* ; at the request of the prelates, earls and barons, at his parliament at Westminster. *Stat. Articuli sup. chartas*, pr.

To. *A tout la commune Dengleterre* ; to all the people of England. *Id.* c. 1.

For. *A tous jours* ; for ever. *Litt.* sect. 625.

In. *Nul common plee ne soit desormes tenu a leschequer* ; no common plea (action) shall henceforth be held in the exchequer. *Art. sup. chart.* c. 4.

A AVER ET TENER. L. Lat. [L. Lat. *habendum et tenendum*.] To have and to hold. *Litt.* sect. 523, 524. *A aver et tener a luy et a ses heires, a tous jours* ; to have and to hold to him and his heirs for ever. *Id.* sect. 625.

A CANCELLIS. L. Lat. A chancellor ; anciently so called from the *cancelli*, (lattices, or latticed enclosure,) within which he performed his office. *Cassiodorus Variar.* lib. 11. form. 6. *Spelman*, voc. *Cancellarius*. See *Cancellarius*.

A CE. L. Fr. For this purpose. *Kelham.* *A causa de cy* ; for this reason. *Id.*

A *communi observantia non est recedendum*. From common observance there should be no departure ; there must be no departure from common usage, or opinion. 2 *Co.* 74. *Co. Litt.* 186 a. 365 a. Applied to professional usage and opinion. *Id. ibid.* Common opinion, (*communis opinio*.) is of good authority in law. *Id.* 186 a. *Litt.* sect. 288, 697.

A CONFECTIO. L. Lat. From the making. 5 *Co.* 1. 1 *Ld. Raym.* 480. See *Confectio*.

A CONSILIIS. Lat. A counsellor ; one who is of, or in another's counsels ; one whose office it is to give counsel. A term formerly applied, in ecclesiastical law, to an advocate or *responsalis*, who gave answers or counsel, on being consulted for that purpose. *Spelman*, voc. *Apocrisiarius*. The common professional phrase, "of counsel," seems to be derived from this source.

A DATU. L. Lat. From the date. 2 *Salk.* 413. *A die datū* ; from the day of the date. *Id. ibid.* 2 *Crabb's Real Property*, 248, § 1301. 1 *Ld. Raym.* 84, 480. 2 *Id.* 1242. *A dato* ; from the date. *Cro. Jac.* 135. See *Datus*, *Datum*, *Date*.

A *digniori fieri debet denominatio et resolutio*. The title and exposition of a thing ought to be derived from, or given, or made with reference to the more worthy degree, quality, or species of it. *Wingate's Maxims*, 265.

A FINE FORCE. L. Fr. Of necessity. *Litt.* sect. 455. See *Fine force*.

**A LARGE.** L. Fr. At large. *Litt. sect.* 366, 367.

**A LATERE.** L. Lat. From the side; on, or at the side; collaterally. A term used in the old law of descent, to denote collateral, as distinguished from lineal succession: lineal heirs being in the direct or right line, ascending or descending, and collateral heirs *on the side* of it. *Hæredes a latere venientes*; heirs coming from the side; succeeding collaterally; collateral heirs. *Bract. fol. 20 b.* *A latere ascendit [jus;]* collaterally, the right ascends. *Id. fol. 62 b.* Used in the civil law, and by Bracton, as the synonyme of *ex transverso*, (Gr. *ἐκ πλαγίου*) across; the lines denoting collateral succession being represented as crossing the main, or right line, or proceeding obliquely from it. *Inst. 3. 6. pr. Id. 3. 8. 3. Nov. 118, c. 3. Bract. fol. 67 a.* See *Linea recta*.

Out of the regular or lawful course; incidentally, or casually.—Applied to the acts of strangers, or persons having no legal interest. *Esto quod—venerit aliquis a latere, et procuratorem egerit*; suppose that some person came casually, and ejected the proctor. *Bract. fol. 42 b.* *Confirmatio a latere facta*; a confirmation made by one having no legal interest, (*a non domino*.) *Id. fol. 58 a.*

On, or at the side of a person.—*A latere*, in this sense, denotes closeness or intimacy of connexion; a position of favor or distinction. The justices of the ancient court of *Aula Regis* are described as sitting at the king's side; (*a latere regis residentes*.) *Bract. fol. 108 a.* 2 *Reeves' Hist. Eng. Law*, 250. Papal ambassadors, possessing the highest degree of authority and confidence, are styled legates *a latere*. 4 *Bl. Com.* 106. See *Legate*.

**A MENSA ET THORO.** Lat. From table and bed; from bed and board, as the phrase is commonly translated. Used as descriptive of one of the kinds of divorce. 1 *Bl. Com.* 440, 441. See *Divorce*.

**A NATIVITATE.** Lat. From birth. *Reg. Orig.* 266 b. 3 *Bl. Com.* 332.

**A non posse ad non esse sequitur argumentum necessarium negative.** From the impossibility of a thing to its non-existence, the inference follows necessarily in the negative. That which cannot be done is not done. *Hob.* 336 b. Otherwise in the affirmative. *Id. ibid.*

**A PALATIO.** L. Lat. From *palatium*,

(a palace.) Counties palatine are hence so called. 1 *Bl. Com.* 117. See *Palatium*.

**A piratis et latronibus capta dominium non mutant.** Things taken or captured by pirates and robbers do not change their ownership. *Bynk. Quæst. Jur. Pub. b. 1, c. 17.* 1 *Kent's Com.* 108, 184. No right to the spoil vests in the piratical captors; no right is derivable from them to any recaptors in prejudice of the original owners. 2 *Wooddes. Lect.* 258, 259.

**A PRENDRE.** L. Fr. To take. A right to take something out of the soil of another is a profit *à prendre*, or a right coupled with a profit. 1 *Crabb's Real Prop.* 125, § 115. Distinguished from an easement. 5 *Ad. & Ell.* 758. Sometimes written as one word, *apprendre*, *apprender*. 8 *Co.* 126, 127.

**A QUO.** Lat. From which. A term used, with the correlative *ad quem*, (to which,) in expressing the computation of time, and also of distance in space. Thus, *dies à quo*, the day from which, and *dies ad quem*, the day to which a period of time is computed. See *Dies à quo*, *From*. So, *terminus à quo*, the point or limit from which, and *terminus ad quem*, the point or limit to which, a distance or passage in space is reckoned. See *Terminus*, *From*.

Applied also to courts, as expressive of their relation one to another. Thus, a court or judge *à quo* is one from which an appeal is taken, (the court below,) and a court *ad quem* is one to which an appeal is taken, (the court above.) This use of the term is common in the civil and canon law. 4 *Reeves' Hist. Eng. Law*, 33. *Halifax Anal.* b. 3, c. 11, n. 34. 6 *Martin's (La.) Rep.* 520.

**A RENDRE.** L. Fr. To render, to yield. Profits *à rendre* comprise rents and services. *Hammond's N. Prius*, 192. (Am. ed.)

**A rescriptis valet argumentum.** An argument drawn from original writs in the Register is good. *Co. Litt.* 11 a. See *Rescripta*, *Registrum Brevium*.

**A RESPONSIS.** L. Lat. In the canon law. One whose office it was to give or convey answers; otherwise termed *responsalis*, and *apocriarius*. One who, being consulted on ecclesiastical matters, gave answers, counsel, or advice; otherwise termed *a consiliis*. *Spelman, voc. Apocriarius*.

**A RETRO.** See *Aretro*.

**A SECRETIS.** L. Lat. A secretary; one having charge of private matters, or secrets of state. A name anciently given to a chancellor. *Hincmar. Epist.* 3, c. 16. *Spelman, voc. Cancellarius.*

**A summæ remedio ad inferiorem actionem non habetur regressus, neque auxilium.** After using the highest remedy, there can be no recourse to, nor assistance derived from an inferior action. *Fleta, lib.* 6, c. 1. A maxim in the old law of real actions, when there were grades in the remedies given; the rule being that a party who brought a writ of right, which was the highest writ in the law, could not afterwards resort or descend to an inferior remedy. *Bract. fol.* 104 a. 112 b. 3 *Bl. Com.* 193, 194.

**A TEMPORE.** Lat. From time. *A tempore cuius contrarii memoria non existit*; from time of which there exists not memory to the contrary; time out of mind. *Reg. Orig.* 46 a.

**A TERME.** L. Fr. For a term. *A terme de sa vie*; for the term of his life. *Yearbook, T.* 8 Edw. III. 407.

**A TORT.** L. Fr. Of, or by wrong; wrongfully. *Kelham.*

**A verbis legis non est recedendum.** From the words of the law there must be no departure. 5 *Co.* 119. *Wingate's Max.* 25. A court is not at liberty to disregard the express letter of a statute, in favor of a supposed intention. 1 *Steph. Com.* 71. *Broom's Max.* 268.

**A VINCULO MATRIMONII.** L. Lat. From the bond of marriage. 1 *Bl. Com.* 440. 2 *Kent's Com.* 95. See *Divorce*.

**AB.** Lat. From, by, of. See *A*.

At, in. See *Ab initio*.

Used in the composition of official titles, as *ab actis*, (q. v.) See *A*.

**AB ACTIS.** L. Lat. A notary, clerk, or actuary; one who keeps, or has charge of *acta*, public registers, journals, or records. See *Acta*. This, and the similarly formed epithets *à cancellis*, *à secretis*, *à libellis*, were also anciently the titles of a chancellor, (*cancellarius*,) in the early history of that office. *Spelman, voc. Cancellarius.*

**AB ANTE.** Lat. In advance. *Story, J.* 1 *Sumner's R.* 308.

**AB ANTIQUO.** Lat. Of old, anciently. *Magna Charta, 9 Hen.* III., c. 15. *Bract. fol.* 76 a. 3 *Bl. Com.* 95.

**AB ARDENDO.** Lat. From burning. The word *arson* is said to be derived *ab ardendo*; from *ardendo*, i. e. from burning. 4 *Bl. Com.* 220. See *Arson*.

**Ab assuetis non fit injuria.** From things to which one is accustomed, (or in which there has been long acquiescence,) no injury arises. *Jenk. Cent. Introd.* viii. If a person neglect to insist on his right, he is deemed to have abandoned it. *Ambl.* 645. 3 *Bro. C. C.* 639. See *Laches*.

• **AB INDE.** L. Lat. From thence. *Towns. Pl.* 22. Applied to place only. *Id. ibid.*

**AB INITIO.** L. Lat. From the beginning; from the first act. A party is said to be a trespasser *ab initio*, an estate to be good *ab initio*, an agreement or deed to be void *ab initio*, a marriage to be unlawful *ab initio*, and the like. *Ploud.* 6 a. 16 a. 1 *Bl. Com.* 440.—The word *ab*, in this sense, is expressive not only of a point or period of time, but of continuity from that to a subsequent time, without change. Thus, to say a deed or a marriage is void *ab initio*, is as much as to say, it was void when made, and has never been otherwise. See *Trespasser ab initio*.

At the beginning; at first; originally.—*Ab* here has the sense of *in*, as denoting merely a separate period of time, without any necessary continuity to a subsequent time; or rather, it is used in connections denoting actual contrast or change. Thus, it is said a gift or conveyance may be valid at the beginning, (*ab initio*,) that is, when first made, and become invalid by a subsequent act, (*ex post facto*;) and *e converso*. *Bract. fol.* 11 b. 51 a. 171 a. 336 b. 2 *Bl. Com.* 308. *In initio* is used in the same sense. *Bract. fol.* 18 a. 58 a. So, *ab initio, in principio donationis*; at the beginning, at the commencement of the gift. *Id. fol.* 17 b. So, *ab initio, sive post tempus*; at the beginning, or afterwards: *ab initio, vel ex post facto*; at the beginning, or by a subsequent act. *Id. fol.* 213 a. The phrase has the same sense in the civil law. *Inst.* 2. 17. 6. *Id.* 4. 1. 16. And in the law maxim, *Quod ab initio non valet tractu temporis non convalescet*; that which is originally void shall not acquire validity by lapse of time. See *Convalescere*. It is constantly used by Bracton in contrast with the phrase *ex post facto*, (q. v.)

**AB INTESTATO.** Lat. In the civil law. From an intestate, from the intestate; in case of intestacy. *Hæreditas ab intestato*; an inheritance derived from an intestate. *Inst.* 2. 9. 7. *Successio ab intestato*; succession to an intestate, or in case of intestacy. *Id.* 3. 2. 3. This answers to the descent or inheritance of real estate at common law. 2 *Bl. Com.* 490. 516. *Story's Conflict of Laws*, § 480. The phrase *ab intestato* is generally used as the opposite or alternative of *ex testamento*, (from, by, or under a will.) *Vel ex testamento, vel ab intestato* [*hæreditates*] *pertinent*; inheritances are derived either from a will, or from an intestate, (one who dies without will.) *Inst.* 2. 9. 7. *Id.* 3. 10. 3. See *Ex testamento, Intestatus*.

**AB OLIM.** L. Lat. Of old. 3 *Bl. Com.* 96.

**ABACTOR.** Lat. [from *abigere*, to drive away.] In the Roman law. A driver away of cattle and other animals; one who drove away cattle from the herd, or smaller animals in numbers, with the intention of stealing them. *Cowell. Blount.* 3 *Gibbon's Rom. Emp.* (Am. ed.) 185, note. More commonly called *abigeus*, (q. v.)

**ABACTORES.** Plural of *abactor*, (q. v.)

**ABALIENATIO.** Lat. [from *ab*, from, and *alienatio*, a transfer.] In the Roman law. The transfer, conveyance, or alienation of property from one person to another. This compound term occurs frequently in classical writers, but gave place to the simple *alienatio*, which is the term used in the civil law, and from which the English *alienation* has been formed. *Inst.* 2. 8. pr. *Id.* 2. 1. 40. See *Alienatio*.

**ABAMITA.** Lat. In the civil law. A great great grandfather's sister, (*abavi soror*.) *Inst.* 3. 6. 4. Printed in Bracton *abavita*. *Bract.* (ed. 1569,) fol. 68 b.

**ABANDONMENT.** [Lat. *cessio, derelictio, destitutio*.] The relinquishment, cession, or surrender of a right, or of property, by one person to, or for another. See *Cession*.

The giving up a thing absolutely, without reference to any particular person or purpose; as throwing a jewel into the highway; leaving a thing to itself, as a vessel at sea; desertion, or dereliction. 2 *Bl. Com.* 9, 10. See *Dereliction*.

The voluntary leaving of a person to whom one is bound by a particular relation,

as a wife, husband, or child. See *Malicious Abandonment*.

**ABANDONMENT.** In marine insurance. A relinquishment, or cession of property by the owner to the insurer of it, in order to claim as for a total loss, when in fact it is so by construction only. 2 *Steph. Com.* 178.—The exercise of a right which a party having insured goods or vessels has, to call upon the insurers, in cases where the property insured has, by perils of the sea, become so much damaged as to be of little value, to accept of what is, or may be saved, and to pay the full amount of the insurance, as if a total loss had actually happened. *Park on Ins.* 143. 2 *Marshall on Ins.* 559. 3 *Kent's Com.* 318—335, and notes. Abandonment may be made either by a formal instrument called a deed of cession; or, which is more usual, by letter, no particular form being necessary. 6 *Cranch R.* 268. 1 *Wash. C. C. R.* 400, 530. See 18 *Pick. R.* 83. *Peters' Digest*, Abandonment. *United States Digest*, Abandonment.

**ABANDONMENT.** [Lat. *cessio*.] In French law. The act by which a debtor surrenders his property for the benefit of his creditors. *Merlin Repert.* Abandonment.

**ABARNARE.** L. Lat. [from Sax. *abarian*, to uncover, disclose, or make bare.] To detect, discover, or disclose any secret crime. *LL. Hen. I.* c. 91. *Cowell.* *Abarnatus*; discovered, detected. *LL. Canuti*, c. 104. *Cowell*.

**ABATAMENTUM.** L. Lat. [from *abatare*, q. v.] An abatement of freehold; an entry upon lands by way of interposition between the death of the ancestor, and the entry of the heir. *Co. Litt.* 277 a. *Yelv.* 151. See *Abatement of freehold*.

**ABATARE.** L. Lat. [from Fr. *abater*, q. v.] To abate. *Abatavit*; she abated. *Yelv.* 151. See *Abate*.

**ABATE.** [from Fr. *abater*, *abatre*, to beat, or throw down; L. Lat. *abatere*.] To beat, break, pull or throw down; to overthrow, demolish, or destroy a material object, as a house or castle. *Le roy pur le trespas, et pur le despit, face abate le chastell, ou le forcelet*; the king for the trespass, and for the contempt, shall cause the castle or fortress to be abated (or demolished.) *Stat. Westm.* 1, c. 17. To abate a fold, or the hurdles of a fold. 8 *Edw. III.* 37. 8 *Co.* 249. This original meaning of the word is still preserved in

modern law, in its application to nuisances. To *abate* a nuisance is to remove it, by pulling, cutting, or breaking it down, or otherwise destroying it. 3 *Bl. Com.* 168.

To overthrow, destroy or defeat a right, or a judicial proceeding. To *abate* a freehold, is to overthrow it by the intervention of a stranger. 3 *Bl. Com.* 168. See *Abatement of freehold*. To *abate* a writ or action, is to defeat, overthrow, prostrate, (*prostrare*,) quash, (*cassare*,) or put an end to it by some fatal exception. 3 *Bl. Com. ub. sup. Co. Litt.* 134 b. *Steph. Plead.* 47. See *Abatement in pleading*.

To be reduced, or diminished, (lowered or brought down;) as the claim of a legatee, or creditor. 2 *Fonbl. Equity*, 369. See *Abatement among legatees*.

To cease, terminate, or come to an end prematurely, as a suit, or other judicial proceeding; (to drop or fall; *L. Lat. cadere*.) 2 *Archb. Pract.* 299. 6 *Wheaton's R.* 260. See *Abatement in practice, Cadere*.

**ABATEMENT.** [*L. Lat. abatamentum*.] The act of abating; the state of being abated. See *Abate*; and *infra*.

**ABATEMENT of a nuisance.** The taking away of a nuisance by pulling, cutting, or breaking it down, or otherwise removing or destroying it.\* The remedy which the law allows a party injured by a nuisance, of destroying or removing it by his own act, so as he commits no riot in doing it, nor occasions (in the case of a private nuisance,) any damage beyond what the removal of the inconvenience necessarily requires. 3 *Bl. Com.* 5, 168. 3 *Steph. Com.* 361. 2 *Salk.* 458. 1 *Chitt. Gen. Pract.* 647—658. 2 *Crabb's Real Prop.* 1078, § 2475.

**ABATEMENT of freehold.** [*L. Lat. abatamentum*.] The overthrow of a freehold by the unlawful entry of a stranger, where the possession is vacant. The act of a stranger in entering upon lands, after the death of the ancestor, or person last seised, and before the entry of the heir, devisee, or person next entitled, and keeping the latter out of possession. *Co. Litt.* 277 a. 3 *Bl. Com.* 168. 3 *Steph. Com.* 482. 2 *Crabb's Real Prop.* 1063, § 2454 b. A species of ouster of the freehold, the technical peculiarity of which consists in its being effected by *intervention*, that is, by stepping in, or interposing between the ancestor and heir. Hence called in the books an *entry by interposition*. *Co. Litt.* 277 a.

**ABATEMENT among legatees.** [*L. Lat.*

*defalcatio*.] The proportionate reduction, or diminution which legatees are subject to have made in the pecuniary legacies bequeathed to them, when the funds or assets out of which such legacies are payable, are not sufficient to pay them in full. 2 *Fonbl. Equity*, 369. *Ward on Legacies*, 369, ch. vi. sec. vii. 1 *Story's Equity Jurispr.* § 555. *Bract. fol.* 61 a. 2 *Bl. Com.* 512, 513.

**ABATEMENT in pleading.** [*L. Lat. cassatio*.] The defeating, overthrowing, prostration, quashing, or putting an end, for the present, to a writ or action, by some matter of fact pleaded by a defendant; the plea itself being termed a plea in *abatement*. *Co. Litt.* 134 b. 277 a. 3 *Bl. Com.* 168. *Steph. Pl.* 47, Appendix, Note (22). See *Plea in abatement*.

**ABATEMENT in practice.** The cessation or determination, (falling, or dropping) of a suit, or the suspension of all proceedings in it, from the want of proper parties capable of proceeding therein; as in consequence of the death of one of the parties during its pendency. 2 *Archb. Pr.* 299. 2 *Tidd's Pract.* 932. *Story's Eq. Plead.* § 354. 6 *Wheaton's R.* 260. See *Cadere*. At common law, a suit when abated is absolutely dead, but in equity, a suit when abated is, (if such an expression be allowable,) merely in a state of suspended animation, and may be revived. *Story's Eq. Pl. ub. sup.*

**ABATER, Abatre.** *L. Fr.* To beat down, overthrow, or demolish. *Stat. Westm.* 1. c. 17. See *Abate*.

To *abate*, or quash. *Il n'est raison de abater le brief*; it is no reason for quashing the writ. Yearbook, 5 *Edw. III.* 230. *Le brief ne abatera*; the writ shall not abate. *P. 4 Edw. III.* 134. *Ceo abateroit le brieve*; this would abate the writ. *Reg. Orig.* 229 b, *regula*.

**ABATOR.** One who abates; one who removes a nuisance; one who enters upon land by way of interposition, before the entry of the heir, or person lawfully entitled. *Litt. sect.* 475. *Co. Litt.* 277 a. *Cowell*. See *Abatement of freehold*.

**ABATUDA.** *L. Lat.* Diminished. *Moneta abatuda*; money clipped, or diminished in value. *Dufresne*.

**ABATUS, Abatu.** *L. Fr.* [from *abater*, q. v.] Beaten or thrown down. *Bois abatu*; wood cut or fallen. *Kelham*.

Abated, quashed. *Un brieve fuit abatus*.

A writ was quashed. *Reg. Orig.* 97 b. *nota.* *Ne soit le briefe abatus*; the writ shall not be quashed. *Stat. Westm.* 1. c. 47.

ABAVIA. Lat. In the civil law. A great great grandmother. *Inst.* 3. 6. 2. *Bract.* fol. 68 b.

ABAVITA. A great great grandfather's sister. *Bract.* fol. 68 b. This is a misprint for *abamita*, (q. v.)

ABAVUNCULUS. Lat. In the civil law. A great great grandmother's brother; (*abavia frater.*) *Inst.* 3. 6. 4. *Bract.* fol. 68 b. Called by Bracton *abavunculus magnus.* *Id. ibid.*

ABAVUS. Lat. In the civil law. A great great grandfather. *Inst.* 3. 6. 2. *Bract.* fol. 67 a.

ABBAIAUNCE. L. Fr. Abeyance. See *Abeyance.*

ABBAS. L. Lat. An abbot. *Reg. Orig.* 238 a. 303 a.

ABBATISSA. L. Lat. An abbess. *Reg. Jud.* 4 b.

ABBETTARE, *Abettare.* L. Lat. To abet. *Rast. Entr.* 54. *Abettasse et procurasse*; to have abetted and procured. *Reg. Orig.* 134 a. See *Abet.*

ABBETTATOR, *Abettator.* L. Lat. An abettor. *Spelman.* *Stat. Westm.* 2, c. 12. See *Abettor.*

ABBETTUM. L. Lat. Abetment. *Reg. Orig.* 270 a. *Stat. Westm.* 2, c. 12. See *Abetment.*

ABBREVIATE. In Scotch law. An abstract. *Ersk. Inst.* b. 2, tit. 12, § 43.

ABBREVIATIO. L. Lat. An abbreviation. *Abbreviationum ille numerus et sensus accipiendus est, ut concessio non sit inanis.* In abbreviations, that number [whether singular or plural,] and that sense is to be taken by which the grant is not rendered void. 9 *Co.* 48.

ABBREVIATION. A short or contracted mode of writing, very common in old records, law treatises and reports, especially those in Latin and French, and still used to a limited extent in the practice of the courts, and in printed books. There are various kinds of abbreviation: as,

By using the initial letters of words instead of the words at length; as *B. R.* for *Banco Regis*; *N. P.* for *Nisi Prius*; *S. C.* for *Same Case*, and the like.

By using the first syllables instead of the entire words; as *re. fa. lo.* for *recordari facias loquellam*; *sus. per col.* for *suspensus per collum*; and the more modern and familiar *cur. adv. vult*, for *curia advisari vult*; *fi. fa.* for *feri facias*; *sci. fa.* for *scire facias*, and the like. So in references to authorities; *lib.* for *liber*, *cap.* for *caput*, and the like.

By doubling the initial letter to denote the plural; as *LL.* for *leges*, laws; *cc.* for *capita*, chapters. All the foregoing kinds of abbreviation are still in common use.

By omitting one or more of the letters of a word, as *dns.* for *dominus*; *het.* for *habet*; *hmdi.* for *hujusmodi*; *oibs.* for *omnibus*; *qd.* for *quod*; and the French *boe.* for *bone*; *dde.* for *demande*, *pols.* for *parols*, and the like. These contractions formed one of the peculiarities of the *court hand* in which the records of the courts were anciently written, and are followed in some of the old printed books, as Bracton, and the Register. They were accompanied by various arbitrary marks upon, or over the letters retained, to denote the omissions. *Towns. Pl. per tot.* See *Court hand*, *Contraction.* They were prohibited by the English statute of 4 *Geo. II.* c. 26, the provisions of which have generally been adopted in the United States. 3 *Bl. Com.* 323. 2 *N. Y. Rev. St.* [275,] 205, § 9. A very few of these contractions, however, continue to be retained, though without any of the ancient marks; as *vs.* for *versus*; *adsm.* for *ad sectam*, and the like.

By substituting a different letter for those omitted, as *acco.* for *actio*; *cassaco.* for *cassatio*; *administracon* for *administration*, and the like. *Towns. Pl.* 26. But these are entirely disused.

ABBROCAMENTUM, *Abrocamentum.* L. Lat. Abbrochment, or abroachment. *Spelman.* See *Abbrochment.*

ABBROCHMENT, *Abroachment, Abroachment.* [L. Lat. *abrocamentum*; from *abroch*, or *abroach*, Sax. *abraccan*, to break.] The buying up of goods by wholesale, (*emptio mercium integrarum*,) before they are brought to a market or fair, and selling them again, (*breaking* them up,—*per portiones distractio*,) by retail; a forestalling of the market. *Spelman*, voc. *Abrocamentum.* *Cowell.*

ABBUTTALS. See *Abuttals.*

**ABCARIARE.** L. Lat. To carry away. *Cepit et abcariavit*: he took and carried away. *Dyer*, 70 a.

**ABDICATION.** [Lat. *abdicatio*, from *abdicare*, to renounce.] The renunciation or relinquishment of an office, either formally and expressly, or by actions inconsistent with the proper discharge of its duties. Commonly used to express the voluntary renunciation of supreme power. 1 *Bl. Com.* 211. 4 *Id.* 78. *Termes de la ley*.

**ABDITORIUM.** L. Lat. [from *abdere*, to hide.] A place to hide and preserve goods, plate or money; an abditory. 3 *Mon. Angl.* 173. *Cowell*.

**ABDUCERE.** Lat. To lead away; to carry away. *Abduxit*; he led away. Applied in old writs to the taking of live animals, as distinguished from *asportavit*, (q. v.) *F. N. B.* 86 A. note. See *Cepit et abduxit*. Applied also to the taking of persons. *Rapuit et abduxit*; he ravished and carried away. *Stat. Westm.* 2, c. 35. 2 *Inst.* 440. *De hæredibus vi abductis*; concerning heirs carried off by force. *Stat. Merton*, c. 6.

**ABDUCTION.** [Lat. *abductio*, from *abducere*, to lead away.] In criminal law. The offence of taking away a man's wife, child or ward, by fraud and persuasion, or open violence. 3 *Bl. Com.* 139-141. 3 *Steph. Com.* 538. 539. The term is applied also to the unlawful taking, or detention of any female, for the purpose of marriage, concubinage or prostitution. *Stat.* 9 *Geo.* IV. c. 31, sec. 19, 20. 4 *Steph. Com.* 129. See 2 *N. Y. Rev. Stat.* [663, 664,] 553, §§ 24-26. See *Kidnapping*.

**ABEARANCE,** *Abearing*. [from *abear*, or *bear*, to behave; L. Lat. *gestus*.] In old English law. Bearing or carriage; deportment, conduct or behaviour.\* 4 *Bl. Com.* 256. See *Good abearance*.

**ABEISSEMENT,** *Abbessement, Abbasement*. L. Fr. A lowering, lessening, abatement. *Kelham*.

**ABEREMURDER.** [Sax. *aberemord*, or *eberemord*, from *abere*, evident or open, and *mord*, killing, murder: L. Lat. *aberemurdrum, apertum murdrum*.] In Saxon law. Plain or apparent murder, open killing, (*caedes manifesta*), as distinguished from the less heinous crimes of manslaughter and chance-medley. Declared a capital offence, without fine or commutation, by the laws of Canute, and of Henry I. *LL.*

*Canuti*, c. 93. *LL. Hen. I.* c. 13. *Spelman. Cowell*.

**ABET.** [from Sax. *a*, on, or onward, and *betan*, or *gebetan*, to stir up, or excite; L. Lat. *abettare*.] In criminal law. To encourage, set on, stir up, or excite to commit a crime. *Spelman*, voc. *Abettator. Cowell. Whishaw*. Always taken in a bad sense, and generally used in connection with the word *aid*; as in the phrases, "to aid and abet," "aiding and abetting."

**ABETMENT.** [L. Lat. *abettum, abettum*; L. Fr. *abette*.] In old criminal law. An encouraging, or instigation. *Staundf. Pl. Cor.* 105. *Cowell. Blount*.

**ABETTOR.** [L. Lat. *abettator, abettator*.] In criminal law. An instigator, or setter on, (*incitator*;) one who promotes or procures a crime to be committed; one who commands, advises, instigates, or encourages another to commit a crime, (*qui alium ad facinus aliquod perpetrandum exacuit, tutaturve facturum*.) *O. N. Br.* 21. *Spelman*, voc. *Abettator. Cowell*. Now generally applied to a person present, either actually or constructively, at the commission of a crime, who does not commit it with his own hands, but assists, facilitates, or encourages its perpetration. 1 *Russell on Crimes*, 26. 27. 4 *Bl. Com.* 33. Sometimes called a principal in the second degree. *Id. ibid.* See *Abet*.

**ABEYANCE,** *Abeiance, Abbayance, Abbaunce.* L. Fr. & Eng. [from Fr. *bayer*, or *abbayer*, to expect, to wait for earnestly, to gape after, to bay at; L. Lat. *abeyantia*.] In the law of estates. Expectation, waiting, suspense; remembrance and contemplation in law. Where there is no person in existence in whom an inheritance can vest, it is said to be in *abeyance*, that is, in expectation; the law considering it as always potentially existing, and ready to vest whenever a proper owner appears. 2 *Bl. Com.* 107. Or, in other words, it is said to be in the remembrance, consideration and intendment of the law. *Litt.* sect. 646, 650. Thus, in a grant to J. for life, and afterwards to the heirs of R., the inheritance is plainly neither granted to J. nor R., nor can it vest in the heirs of R. till his death: it remains therefore in waiting, or *abeyance*, during the life of R. 2 *Bl. Com. ub. sup. Plowd.* 29 a. 35 a. 556.

The term *abeyance* is also sometimes applied to personal property. Thus, in the case of maritime captures during war, it is

said that until the capture becomes invested with the character of prize by a sentence of condemnation, the right of property is in *abeyance*, or in a state of legal sequestration. 1 *Kent's Com.* 102.

An inheritance in *abeyance* has been otherwise said to be *in nubibus*, (in the clouds;) a figure intended to denote a condition of suspension, indefinite and intangible existence, remoteness from human view and enjoyment, or molestation; or readiness to descend and vest at the proper time. *Litt. ub. sup. Co. Litt.* 342 b. *Hob.* 335. 2 *Crabb's Real Prop.* 8, § 951. 4 *Kent's Com.* 258, 260, note. So, it has been said to be *in gremio legis*, (in the bosom of the law,) that is, under the special protection of the law, and existing only in its view, intendment or consideration. 1 *Co.* 131, 134, *arg.* *Spelman*, voc. *Abeyantia*. *Litt. ub. sup.* So the fee, in such case, has been said by Britton to be *in the balance*, (*le fee est en balance*.) *Brit.* fol. 249. And Bracton uses the corresponding phrase, *in pendent*, (in suspension.) *Bract.* fol. 19 a. 20 a. *Spelman* prefers giving to *abbayer*, the root of the word, the sense of fixedness of position, (*certe stationi inherere*,) the fee being stopped or arrested in its transit from one party to another. Mr. Stephen objects to *expectation* as the proper import of *abeyance*, and prefers Littleton's exposition of the term,—remembrance, intendment and consideration of the law; referring to the case of the parson of a church, where the fee is in *perpetual abeyance*. 1 *Steph. Com.* 223, note (I). Mr. Fearn treats the whole notion of *abeyance* as an absurd and unintelligible fiction. *Fearn on Remainders*, 452. [360.] And the inclination in modern law seems to be, to substitute in its place the doctrine, that where there is no person in existence in whom an inheritance can vest, it remains in the grantor or his heirs, or (in case of a devise,) in the heirs of the testator, until the contemplated contingency happens. 2 *Chitt. Bl. Com.* 107, notes.

An inheritance in *abeyance* answers to the *hereditas jacens*, or *caduca* (q. v.) of the civilians and feudists, which, by a figure directly opposite to that of suspension, was considered as waiting in a state of *prostration* for the heir to take it up. *Bract.* fol. 8 a. 160 a. *Co. Litt.* 342 b. *Incertam et caducam hereditatem relevabat*; he raised, or took up the doubtful and fallen inheritance. 2 *Bl. Com.* 56.

**ABEYANTIA.** L. Lat. *Abeyance*. *Spelman*. See *Abeyance*.

**ABIATICUS, Avariaticus.** L. Lat. In feudal law. A grandson; the son of a son. *Spelman. Lib. Feudorum*, cited *ibid*.

**ABIGEATOR.** See *Abactor, Abigeus*.

**ABIGEATUS.** Lat. [from *abigere*, to drive away.] In the civil law. The offence of stealing, or driving away cattle. *Dig.* 47. 14. 2. See *Abigere, Abigeus*.

**ABIGEI.** Lat. Plural of *Abigeus*, (q. v.) 4 *Bl. Com.* 239.

**ABIGERE.** Lat. [from *ab*, from, and *agere*, to drive.] In the civil law. To drive away. Applied to those who drove away animals with the intention of stealing them. *Dig.* 47, 14, *de abigeis*. Applied also to the similar offence of cattle stealing on the borders between England and Scotland.—*Scott's Minstrelsy of the Scottish Border, Introd. Append.* No. vii.

**ABIGEUS, Abigevus, Abigeator, Abactor.** Lat. [from *abigere*, to drive away.] In the civil law. A stealer of cattle: one who drove, or drew away (*subtrahit*) cattle from their pastures, as horses or oxen from the herds, and made booty of them; and who followed this as a business, or trade, (*quasi artem*.) *Abigei proprie hi habentur qui pecora ex pascuis, vel ex armentis subtrahunt, et quodammodo deprædantur, et abigendi studium quasi artem exercent; equos de gregibus vel boves de armentis abducentes.* *Dig.* 47. 14. 1. 1. The term was applied also to those who drove away the smaller animals, as swine, sheep and goats. *Id.* 47. 14. 1. 2. In the latter case, it depended on the number taken, whether the offender was *fur* (a common thief,) or *abigeus*. *Id.* 47. 14. 3. And so Bracton observes, *quantitas discernit furem ab abigeo*. *Bract.* fol. 105 a. But the taking of a single horse or ox seems to have constituted the crime of *abigeatus*. *Dig.* 47. 14. 3. And those who frequently did this were clearly *abigei*, though they took but an animal or two at a time. *Id.* 47. 14. 3. 2.

**ABISHERSING, (properly Mishersing.)** In old English law. A freedom or immunity from forfeitures, or amercements. *Spelman*. See *Mishersing*.

**ABJECTIRE.** L. Lat. In old laws. To forfeit one's recognizance, (*vadimonium deserere*;) to neglect a plea or suit, (*placitum negligere*;) to fail in an action, (*deficere in lite*;) to lose a cause by default or neglect



to prosecute, (*causam per defallam, vel non prosequendo amittere.*) *Spelman.*

**ABJUDICARE.** L. Lat. [from *ab*, out of, and *judicare*, to adjudge.] To deprive of a thing by the judgment of a court; the same with *forisjudicare*. (q. v.) *Ubi custos abjudicatus est de custodia sua*; where a guardian is deprived of his guardianship. *Bract.* fol. 256 a.

**ABJUDICATIO.** L. Lat. [from *abjudicare*, q. v.] The depriving of a thing by the judgment of a court; a putting out of court; the same as *forisjudicatio*, for judgment, for judgment. *Fleta*, lib. 2. c. 43, [c. 50, § 8.] *Co. Litt.* 100 a, b. *Towns. Pl.* 49. See *Forisjudicatio*.

**ABJUDICATUS.** See *Abjudicare*.

**ABJURARE.** Lat. [from *ab*, from, and *jurare*, to swear; L. Fr. *forjurer*.] To swear from; to swear to give up, or leave a thing, or place; to renounce or abandon by, or upon oath; to forswear. *Abjurare regnum*; to abjure the realm, to swear to leave it. *Bract.* fol. 135 b. 136 a. *Si fur convictus fuerit, aut morti tradatur, aut regnum abjuret, vel patriam, comitatum, civitatem, burgum vel villam*; if the thief be convicted, he shall either be delivered up to death, or he shall abjure the realm, or the country, the county, city, borough, or town. *Id.* fol. 151 b. *Abjurare terram*; to abjure the land. *Articuli cleri*, c. 10.

**ABJURATION.** [Lat. *abjuratio*, from *abjurare*, q. v.] A renunciation or abandonment by, or upon oath; the taking or making oath to leave a place. *Abjuration* in this sense, in English law, usually was of the realm, but it might also be of a particular county, city, borough, or town. See *Abjurare*.

The taking an oath to renounce one's allegiance to a particular sovereign, prince, or state. See *Abjuration of allegiance*.

**ABJURATION OF ALLEGIANCE.** In political law. A declaration under oath, before a competent authority, that the party making oath renounces and *abjures* all the allegiance and fidelity which he owes to a particular sovereign. A formality required of all aliens, by the laws of the United States, previously to their being naturalized. *Act of Congress*, April 14, 1802. 2 *Kent's Com.* 64, 65. An oath, abjuring all allegiance to the descendants of the Pretender, is required in England from all persons holding office. 1 *Bl. Com.* 368. 2 *Steph. Com.* 422. 3 *Id.* 106. See *Allegiance*.

**ABJURATION OF THE REALM.** [Lat. *abjuratio regni*.] In ancient English law. The taking an oath to depart from the kingdom, and never return, unless by permission; a species of sworn, or self banishment, formerly allowed to offenders who confessed their crimes, after fleeing to a sanctuary, as the means of saving their lives. *Bract.* fol. 135 b. 4 *Bl. Com.* 332. The blood of the person thus *abjuring* was attainted, he forfeited all his goods and chattels, and was considered as dead in law. *Id.* 333. 1 *Id.* 443. *Co. Litt.* 133 a.

Abjuration of the realm is generally considered as having been abolished by statute 21 *Jac.* I. c. 28; but it is mentioned in the books at a later period. 2 *Inst.* 629. 11 *East*, 301. 2 *Kent's Com.* 156, note. The old oath of abjuration, as given by Bracton, was in this form: "Hear this, ye justices, or coroners, that I will depart from the realm of England, and that I will not return thither again, unless by permission of the lord the king, or his heirs. So help me God, &c." The party thus *abjuring* was then obliged to select a port where he would embark, and a certain time, computed by reasonable days' journeys, was allowed him to reach it. He was not allowed to quit the king's highway, nor to stay in any one place more than two nights, nor to turn aside from the road, unless for sufficient cause; but was bound to go straight to the port, so as to be there at the day given him, and to embark as soon as he could obtain a vessel and a wind, unless detained by stress of weather. If he failed in any of these particulars, it was at his peril. *Bract.* fol. 135 b. 136.

**ABJURE.** [L. Lat. *abjurare*; L. Fr. *forjurer*.] To renounce, or abandon, by, or upon oath. See *Abjurare*, *Abjuration*.

**ABMATERTERA.** Lat. In the civil law. A great great grandmother's sister, (*abavix soror*.) *Inst.* 3. 6. 4. *Bract.* fol. 68 b.

**ABNEPOS.** Lat. In the civil law. A great great grandson. *Inst.* 3. 6. 2.

**ABNEPTIS.** Lat. In the civil law. A great great granddaughter. *Inst.* 3. 6. 2.

**ABOLITION.** In old practice. A destroying, or putting an end to an action or prosecution. Leave given to a criminal accuser to desist from further prosecution. *Stat.* 25 *Hen. VIII.* c. 21. *Cowell.* Answering to the entry of a *nolle prosequi* in modern practice.

**ABORTION.** In criminal law. The premature exclusion of the human fœtus, after the period of quickening; which when procured or produced with a malicious design or for an unlawful purpose, is a criminal offence. 4 *Steph. Com.* 128. 1 *Russell on Crimes*, 671. 1 *Chitt. Gen. Pr.* 35. 2 *N. Y. Rev. St.* [661.] 550, § 9. *Id.* [694.] 578, § 21. *Statutes of Ohio*, chap. 35, p. 252.

**ABOUTIR.** L. Fr. To abut. See *Abut.*

**ABOUTISSEMENT.** L. Fr. An abutment, or abuttal. See *Abuttal.*

**ABPATRUUS.** Lat. In the civil law. A great great grandfather's brother, (*abavi frater.*) *Inst.* 3. 6. 4. *Bract.* fol. 68 b. Called by Bracton *abpatruus magnus.* *Id.* *ibid.*

**ABRASIO.** Lat. [from *abradere*, to scrape off.] A scraping off; erasure in a writ. *Bract.* fol. 413 b. *Abrasus*; erased. *Id.* *ibid.*

**ABRIDGE.** [from Fr. *abreger*; L. Lat. *abbreviare.*] In old practice. To make shorter; not, however, in words only, as in the popular sense, retaining the substance, but by subtracting, severing, or leaving out some of the substance itself. Applied to complaints or declarations in the old real actions. *Bro. Abr.* Abridgment. *Cowell.* Story J., 3 *Peters' U. S. R.* 99, 183.

**ABROACHMENT.** See *Abbroachment.*

**ABROCAMENTUM.** See *Abbrocamentum.*

**ABROCEUR.** L. Fr. A broker. *Kelham.* See *Broker.*

**ABROGARE.** Lat. [from *ab*, from, off, or away, and *rogare*, to propose or pass.] In the civil law. To take away, annul or repeal; to abrogate. *Rogare legem*, among the Romans, signified to propose a law, (literally, to ask for a law, in modern phrase, to bring in a bill;) and also to adopt a law proposed; to pass or make it. See *Rogare.* *Abrogare legem*, or *legi*, signified the reverse of this, viz. to annul a law; to undo what had been done in passing it; to repeal it. *Abrogatur legi cum prorsus tollitur*; a law is abrogated when it is entirely taken away. *Dig.* 50. 16. 102. *Leges posteriores priores contrarias abrogant.* Later laws abrogate former ones that are contrary to

them. *Cro. Jac.* 121. 11 *Co.* 62 b. Where two laws are contrary to, or in conflict with each other, that which was last made is always understood as abrogating the other.

From *abrogare* has been formed the English *abrogate*, but no corresponding word has been framed from the simple *rogare*. In the Roman law, various other words compounded of *rogare* were in use; as *derogare*, *subrogare*, *obrogare.* (qq. v.)

**ABROGATE.** [Lat. *abrogare*, q. v.] To undo what has been done in passing a law; to annul a law by an act of the same power which made it; to annul by an authoritative act; to repeal. See *Abrogare.* Applied also to the abolition of established customs, by a different and long continued usage.

**ABROGATION.** [Lat. *abrogatio*, from *abrogare*, q. v.] The act of abrogating; the annulling or repeal of a law by authority of the legislative power. See *Abrogate*, *Express abrogation*, *Implied abrogation.*

**ABSCOND.** [from Lat. *abscondere*, to hide away.] To hide or conceal one's self, to keep close; to go away privately. Applied to a debtor who clandestinely withdraws from the place of his residence or business, or who secretes himself to avoid legal process. 2 *Kent's Com.* 401. *N. Y. Rev. St.* Part II. ch. v. tit. 1.

**ABSENCE.** In Scotch law. Want, or default of appearance. A decree is said to be *in absence* where the defender [defendant] does not appear. *Wharton's Lex. Ersk.* *Inst.* b. 4, tit. 3, § 6. See *Decreet.*

**ABSENTEE.** [Fr. *absent*; Lat. *absens.*] One who is away from his domicile, or usual place of residence. *Bouvier.* One who has resided in the state, and has departed without leaving any one to represent him. *Civil Code of Louisiana*, Art. 3522, n. 3.

One who never was domiciliated in the state, and resides abroad. *Id.* *ibid.*

**ABSOILE.** *Absoller*, *Absouldre*, *Absoudre.* L. Fr. [from Lat. *absolvere.*] To absolve, acquit, forgive, pardon. Hence the old English *assoil.*

**ABSOLUTA.** Lat. Absolute, complete, without exception, or condition. *Absoluta sententia expositore non indiget.* An absolute sentence or proposition, [one that is plain without any scruple, or absolute without any saving,] needs not an expositor. 2 *Inst.* 533.

**ABSOLUTE.** [Lat. *absolutus, absoluta, absolutum* ; from *absolvere*, to discharge, or perfect.] Complete and perfect in itself, without relation to, or dependence on other things or persons ; as an *absolute* right.

Without condition, exception, restriction, qualification or limitation ; as an *absolute* conveyance, an *absolute* estate.

Final, peremptory ; as an *absolute* rule. See *infra*.

**ABSOLUTE CONVEYANCE.** A conveyance by which the right or property in a thing is transferred, free of any condition, or qualification, by which it might be defeated, or changed ; as an ordinary deed of lands, in contradistinction to a mortgage, which is a conditional conveyance.\* See *Mortgage, Defeasance*. A deed, absolute on the face of it, may however be valid and effectual as a mortgage, as between the parties, if it was intended by them to be merely a security for a debt. 4 *Kent's Com.* 142, 143.

**ABSOLUTE ESTATE.** An estate in lands not subject to, or defeasible upon any condition.\* See *Estate upon condition*.

**ABSOLUTE PROPERTY.** Full and complete ownership of chattels in possession, as distinguished from that of a special, qualified, or temporary kind. 2 *Bl. Com.* 388. 2 *Steph. Com.* 73. 2 *Kent's Com.* 347.

**ABSOLUTE RIGHTS.** Those rights which belong to natural persons, as individuals, in contradistinction to those which arise from the civil and domestic relations ; consisting of the right of personal security, the right of personal liberty, and the right to acquire, enjoy, and dispose of property. 1 *Bl. Com.* 123. 2 *Kent's Com.* 1.

**ABSOLUTE RULE.** In practice. A rule of court commanding something to be done *absolutely*, and at all events, as distinguished from a rule *nisi*, which commands something to be done, *unless* cause be shown against it ; (or, as the latter is more commonly called, a rule to *show cause* why a thing should not be done.) 3 *Steph. Com.* 680. 1 *Tidd's Pract.* 485. See *Nisi, Rule*.

**ABSOLUTE WARRANTICE.** In Scotch law. A warranty against all incumbrances whatever. 1 *Kames' Equity*, 290, 293.

**ABSOLUTELY.** Completely, wholly ; without qualification ; without reference or

relation to, or dependence upon, any other person, thing or event. To give property to a person *absolutely*, is to create such person the absolute and uncontrolled owner of it. But it has been held that the word *absolutely*, in a will, may be so far qualified by accompanying expressions as to convey only a limited interest. See 2 *Penn. St. R.* 120, 133.

**ABSOLUTUM ET DIRECTUM DOMINIUM.** L. Lat. Absolute and direct, (or right) ownership. 2 *Bl. Com.* 105. *Co. Litt.* 1 b. See *Directum, Dominium*.

**ABSONIARE.** L. Lat. To detest and avoid. *Cowell*.

**ABSQUE.** Lat. Without. *Absque generali senatus et populi conventu et edicto* ; without the general convention and order of the council and people. *Will. of Malms.* lib. 3. 1 *Bl. Com.* 199.

**ABSQUE ALIQUO INDE REDDENDO.** L. Lat. Without rendering, or returning any thing therefrom, or therefor. 9 *Co.* 123. A phrase applied to ancient grants, where no tenure was reserved or mentioned. *Id. ibid.*

**ABSQUE HOC.** L. Lat. Without this ; (*absque hoc quod*, &c. ; without this that, &c.) In pleading. Technical words of denial, made use of in pleading by way of special traverse ; which is hence sometimes called a traverse with an *absque hoc*. *Steph. Plead.* 165—186. 9 *Co.* 13. See *Special traverse, Sine hoc quod, Sans ceo que, Without this that*.

This seems to have been originally an ordinary phrase, its barbarous form arising from its peculiar mode of application in composition. Thus, in the statute of Westminster 2 : *Cum duo vel plures teneant boscum, turbariam, piscariam, vel alia hujusmodi in communi*, *absque hoc quod aliquis sciat suum separare* : where two or more hold a wood, turbary, piscary, or other such things in common, without this, that any one knows, (i. e. without any one knowing, or where none knows,) his several. *Stat. Westm.* 2, c. 22. Spelman supposes it to be of Gallic origin, and refers to a constitution of Alan, duke of Bretagne, A. D. 1087, in which the phrase occurs : *absque eo quod cognosceret*, without this, that he knows, or without knowing.

**ABSQUE IMPETITIONE VASTI.** L. Lat. [L. Fr. *sans* (or *sans*), *empeschement de vast* (or *gast*),] Without impeachment

of waste; without accountability for waste; without liability to suit for waste. A clause anciently often inserted in leases, (as the equivalent English phrase sometimes is,) signifying that the tenant or lessee shall not be liable to suit, (*impetito*), or challenged, or called to account, for committing waste. 2 *Bl. Com.* 283. 4 *Kent's Com.* 78. *Co. Litt.* 220 a. *Litt. sec.* 352. See *Impetio*, *Vastum*.

**ABSTRACT OF A FINE.** In old conveyancing. One of the parts of a fine, being an abstract of the writ of covenant, and the concord, naming the parties, the parcels of land, and the agreement. 2 *Bl. Com.* 351. *Id.* Appendix, No. IV, sect. 4. *Shep. Touchst.* 3. More commonly called the *note* of the fine. See *Fine*, *Concord*.

**ABSTRACT OF TITLE.** In conveyancing. An abstract or summary of the most important parts of the deeds, and other instruments composing the evidences of a title to real estate; arranged usually in chronological order, and intended to show the origin, course and incidents of the title, without the necessity of referring to the deeds themselves. It also contains a statement of all charges, incumbrances, liens, and liabilities to which the property may be subjected, and of which it is, in any way, material for purchasers to be apprized. Abstracts of title constitute an important part of the learning of conveyancing, and in England have been illustrated by treatises expressly devoted to the subject. See *Preston on Abstracts*, *Lee on Abstracts*.

**Abundans cautela non nocet.** L. Lat. Abundant caution does no harm. 11 *Co.* 6. Applied to proceedings in practice, adopted in cases of doubt, in order to make sure. *Id. ibid.*

**ABUT.** [L. Lat. *abutare*; from Fr. *abut*, *abouter*, to limit or bound, from *bout*, an end or limit, butt or mark.] To thrust forth the end, (*finem exerere*;) to meet; to come up to a mark (*scopum appetere*;) to bound end ways; to terminate. *Spelman*, voc. *Abutare*. Called by *Spelman* a feudal term; (*vox feodalis*.)

To come to an end, as a boundary does when it takes a new direction.\* See *Abutals*.

In modern law. To come up to, touch, meet, lie, or border upon. See *Abutals*. A close is sometimes described in pleading as *abutting* on the east, on a certain close, &c.; on the west, on a certain field, &c.;

on the north, &c.; and on the south, &c. 2 *Chitt. Pl.* 660—662.

**ABUTTALS**, *Abutals*, *Buttals*. [from *abut*, q. v.] Commonly defined "the buttings and boundings of lands, east, west, north, and south, showing on what other lands, highways, or places, they *abut*, or are limited and bounded." *Cowell. Tomlins*.

Properly, the limits or boundary lines of lands on the *ends*, as distinguished from those on the sides. Well expressed in the old phrase, "buttals and sidings." *Cro. Jac.* 183. Perhaps also, the angles or terminating points of the lines, especially in lands of an irregular shape.\*

*Abuttal* is sometimes used in the more modern books in the sense of *boundary* in general; thus, in pleading, a close is sometimes required to be described by its *abutals* on other lands. 2 *Chitt. Pl.* 660. The word is also used, but more rarely, as a verb, in the same general sense. *Buttal* is a form to be met with in the older books, but with the particular meaning of a boundary at the *end*, as in the phrase, "buttals and sidings," already quoted. *Butt* is a form still sometimes used, but without much precision, in the phrases "butts and bounds," "buttings and boundings," "butted and bounded." The particular manner of *abuttaling*, (to use the word in its looser sense,) together with the term itself, is said to have originated with the Normans; in proof of which, reference is made to the Customary of Normandy, where the expression occurs, that the declaration must be made *par bouts et costes des dites terres*, &c. (by the ends and sides of the said lands, &c.) *Spelman*, voc. *Abutare*. *Id. Anc. Deeds & Charters*, c. 5. These *bouts*, or ends, were otherwise called heads, (*capita*), and fronts, (*frontes*), and were always said to *abut* (*abutare*) upon the next land, and sometimes to head (*capitare*) on it. *Spelman. Cowell*. The sides, (*latera*, or *costes*), on the other hand, were never said to *abut*, but to *lie* or border upon, to adjoin the next land; (*ad terram proximam adjacere*.) *Spelman*, ub. sup. See *Headlands*, *Sidings*. This shows a marked distinction between the two kinds of boundaries, though it is now lost in the general, and not strictly accurate term, *abuttal*. A still further distinction was sometimes anciently made between one of the ends of a piece of land, and the other, or opposite end, as in the phrases, *caput terre*, *cauda terre*, (qq. v.) This formal division, however, of the boundary lines of lands into ends

and sides, seems necessarily predicated on a regular four-sided figure in the land itself.

There is another sense in which the term *abuttal*, or *butt* (*bout*), was probably, and perhaps originally used; appearing as it does, to involve the radical meaning of the word, besides being applicable to lands of every shape, and not merely to those where the ends were distinguishable from the sides, viz. the end of a boundary line, or the point where it stopped, and turned in a new direction. These points, or angles were, from the earliest times, distinguished by some visible object, or landmark, as at the present day. According to Camden, there were hillocks raised upon the lines on purpose, which were called *botentines*, from which Cowell conjectures the term *butting* to have sprung. In confirmation of the opinion here advanced, it may be observed that the words *mete* and *butt*, in the common phrases, "metes and bounds," "butts and bounds," and which appear to be the synonymes of *abuttal*, as they are of each other, have both the same double meaning of a terminating and turning point. See *Butts, Bounds, Metes*.

ABUTTALATUS. L. Lat. Abuttal-  
led. *Towns. Pl.* 26.

ABUTTARE. L. Lat. To abut. *Abut-*  
*tans*; abutting. *Spelman. Towns. Pl.*  
26, 49.

ACA. L. Fr. Then. *Kelham*.

ACATE. See *Achate*.

ACC., ACCORD. Abbreviations of the Fr. *accordant*, and Eng. *accordingly*; frequently used in the books, especially in the reports, to denote the *accordance* or agreement between one adjudged case and another, in establishing, or confirming the same doctrine. The disagreement or opposition of cases is denoted by *contra*.

ACCAPITARE, *Acapitare, Acapitare*.  
L. Lat. [from *caput*, head, or chief.] To pay homage to a chief lord, on becoming his vassal. *Bract. fol. 78 a. 389 a. Fleta*, lib. 2, c. 50. To pay a relief to a chief lord. *Id. ibid. Montesquieu, Esprit des Loix*, liv. 31, c. 24, note.

ACCAPITUM. L. Lat. Money paid by a vassal upon his admission to a feud; the relief due to the chief lord. *Whishaw. See Accapitare*.

ACCEDAS AD CURIAM. L. Lat. (You go to the court.) In English practice. A writ which lies at common law, to remove a cause from an inferior court not of record, such as a hundred court, or court baron, into one of the superior courts. 3 *Bl. Com.* 34. *F. N. B.* 18. 145 E. *Termes de la ley.* 1 *Tidd's Pract.* 38. The writ is directed to the sheriff, commanding him to go to the court designated, where the suit or plaint is pending, and there to make a record of such plaint, (*recordari facias loquelam*.) and to have such record before the superior court, at a day specified. *Reg. Orig.* 5 b. *Dyer fol.* 169, n. 20. It is peculiar for the most part to the action of replevin, and is merely a *recordari facias loquelam*, with a clause of *accedas ad curiam*, whence its name. 2 *Tidd's Pr.* 414, 415. See other forms of the writ, *Reg. Orig.* 5 a. 9 b. 10. And see *Recordari facias loquelam*.

ACCEDAS AD VICE COMITEM. L. Lat. (You go to the sheriff.) A writ formerly directed to the coroners of a county in England, commanding them to go to the sheriff, where the latter had suppressed and neglected to return a writ of *pone*, and to deliver a writ to him requiring him to return it. *Reg. Orig.* 83. See *Pone*.

ACCEDERE. Lat. [from *ad*, to, and *cedere*, to go, to belong or appertain, to yield to, as incident or secondary.] In the civil law. To go to, or with; to be added, or increased. Less used than the simple word *cedere*, which constantly occurs. See *Cedere*.

ACCEPTANCE. [Lat. *acceptatio*, from *acceptare*, to accept.] A receiving with approbation, or satisfaction; or, in the language of the old books, "a taking in good part." *Termes de la ley. Cowell*.—Approval of, assent to, or acquiescence in a thing received; an agreement to keep a thing received.\*

*Acceptance* is receipt, and something more. There cannot be acceptance without receipt, but there is often receipt without acceptance. *Smith on Contracts*, 71, note (a). The purchaser of goods may, on receiving them from the seller, accept them, or return them as not answering the contract. If he neglect to return them within a reasonable time, or to give notice to the seller that he does not intend to take them, he is considered as having accepted them, and will be held to the purchase.\* 2 *M. & W.* 653, 656. 11 *Id.* 534. *Smith on Contracts, ub. sup.* So, the drawee of

a bill of exchange may, on receiving it, either *accept* it, or return it without acceptance; and the same distinction has been made between the receipt and the *acceptance* of a deed. *Ersk. Inst.* b. 3. tit. 2. § 45.

**ACCEPTANCE of a Bill of Exchange.** [L. Lat. *acceptatio*.] In mercantile law. The act by which the person on whom a bill of exchange is drawn, (called the *drawee*,) assents to the request of the drawer to pay it, or, in other words, engages, or makes himself liable to pay it, when due. 4 *East*, 57, 72. 2 *Bl. Com.* 469. It may be by parol, or in writing, and either general or special, absolute or conditional; and it may be impliedly, as well as expressly given. 3 *Kent's Com.* 83, 85. *Story on Bills*, §§ 242—244. But the usual and regular mode of acceptance is by the drawee's writing across the face of the bill the word "*accepted*," and subscribing his name; after which he is termed the *acceptor*. *Id.* § 243. See *Acceptor*.

**ACCEPTANCE AU BESOIN.** Fr. In French law. Acceptance in case of need; an acceptance by one on whom a bill is drawn *au besoin*, that is, in case of refusal or failure of the drawee to accept. *Story on Bills*, §§ 65, 254, 255.

**ACCEPTANCE SUPRA PROTEST.** In mercantile law. Acceptance over protest. An acceptance of a bill by a third person, *after protest* for non-acceptance by the drawee; such acceptance being for the honor of the drawer, or of some particular endorser. 3 *Kent's Com.* 87. *Story on Bills*, § 121. Called in French law, acceptance *par intervention*. *Id.* § 256.

**ACCEPTARE.** Lat. To accept. *Acceptavit*; he accepted. 2 *Stra.* 817. *Non acceptavit*; he did not accept. 4 *Man. & Gr.* 7.

**ACCEPTATIO.** Lat. [from *acceptare*, q. v.] Acceptance of a bill. *Heinecc. de Camb.* c. 2, § 16. *Id.* c. 6, § 9.

**ACCEPTILATIO.** Lat. [from *acceptum*, a thing received, and *latio*, a putting down.] In the civil law. A holding, considering, or acknowledging as received. A form of releasing one from an obligation, without payment, called an imaginary payment; one of the modes of dissolving obligations in the civil law. *Inst.* 3. 30. 1. *Bract.* fol. 101. It was made verbally, in the usual form of question and answer,

thus: the debtor said to the creditor, *Quod ego tibi promisi habesne acceptum?* (Do you consider what I promised you as received?) The creditor answered, *Habeo*, (I do.) It might also be made in Greek, provided it were in the same form. But it was only verbal contracts that could be thus dissolved. *Inst.* 3. 30. 1.

There was also a more general form of *acceptilatio*, by which obligations of all kinds might be dissolved, after being reduced to the form of a verbal stipulation. *Inst.* 3. 30. 2. This is the kind mentioned in Bracton. *Omne quod tibi debui ex quacunque causa, habesne acceptum?* (Do you consider everything that I have owed you, on whatever account, as received?) To which the answer was, by word or writing, *Habeo, acceptumque fero*; (I hold it so, and put it down as received.) *Bract.* fol. 101 a. The last clause in this example shows the etymology of the word; (*latio*, from *ferre*.)

*Acceptilatio* is used in modern civil law; and as an ordinary English word, by some of the old writers. *Richardson's Dict.*

**ACCEPTOR.** In mercantile law. The party who accepts a bill of exchange. 3 *Kent's Com.* 75. See *Acceptance*.

**ACCESS.** [Lat. *accessus*, q. v.] Approach, or means of approach; opportunity of intercourse, as between husband and wife. 1 *Bl. Com.* 457.

**ACCESSARIUS.** Lat. Accessary; an accessory. *Towns. Pl.* 49. See *Accessorius*.

**ACCESSARY.** [L. Lat. *accessarius*.] In criminal law. One who, without being present at the commission of a felonious offence, becomes guilty of such offence, not as a chief actor, but as a participator, as by command, advice, instigation or concealment, either before or after the fact or commission: a *particeps criminis*. 4 *Bl. Com.* 35. *Cowell*. See *infra*.

**ACCESSARY BEFORE THE FACT.** In criminal law. One who, being absent at the time a crime is committed, yet procures, counsels, or commands another to commit it; and, in this case, absence is necessary to constitute him an accessory, for if he be present at any time during the transaction, he is guilty of the crime as principal. *Plowd.* 97. 1 *Hale's P. C.* 615, 616. 4 *Steph. Com.* 90, note (n.) Thus, if A. advises B. to kill another, and B. does it in the absence of A., in this case B. is principal, and A. is accessory in the murder. 4 *Bl. Com.* 37.

**ACCESSARY AFTER THE FACT.** [L. Lat. *accessarius ex post facto*,—*post effectum scelus. Spelman.*] In criminal law. One who, knowing a felony to have been committed by another, receives, relieves, comforts or assists the felon. 1 *Hal. P. C.* 618. 622. *Hawk. P. C.* b. 2, c. 29, s. 32. And generally, any assistance whatever, given to a felon, to hinder his being apprehended, tried or suffering punishment, makes such assistor an accessary; as furnishing him with a horse to escape his pursuers, money or victuals to support him, a house or other shelter to conceal him, or open force and violence to rescue him. *Hawk. P. C.* b. 2, c. 29, ss. 26, 27, 28. 1 *Hal. P. C.* 620, 621. 4 *Bl. Com.* 38. 4 *Steph. Com.* 91. 2 *N. Y. Rev. Stat.* [699,] 583, § 7.

**ACCESSEMENT.** L. Fr. [Lat. *accessio.*] Addition. *Kelham.*

**ACCESSION.** Lat. [from *accedere*, to go to or with; to be added to, to belong to.] In the civil law. Accession; a going or passing of one thing to, or with another as its principal; an addition, or increase.\* That mode of acquiring property by which according to the rule, *Res accessoria sequitur rem principalem*, (an accessory thing follows the principal thing,) or *cedit rei principali*, (belongs to the principal thing,) the proprietor of the principal thing becomes, *ipso jure*, proprietor of all that belongs to it, [or is added to, or connected with it,] as an accessory thing; whether such addition be by its own increase, as the fruits of the earth, the young of animals; or the operation of natural causes, as the gradual deposit, (*alluvio*), made upon land by a stream; or by the voluntary act of another uniting his property with it, (*ad-junctio*;) as by the interweaving of materials, welding of iron, painting on another's tablet, writing on his parchment, building or planting on his soil; or by the mixing together of things dry, (*commixtio*), or liquid, (*confusio*.) *Inst.* 2. 1. 26—38. *Bract.* fol. 9 a. 10 a. 1 *Mackeld. Civ. Law*, 279—285, §§ 266—270. See *Adjunctio*.

The mode of acquisition by transforming a thing belonging to another, especially by working up his material into a new species, as grapes into wine, was called *specificatio*, and was distinguished from *accessio*, properly so called. 1 *Mackeld. Civ. Law*, 277, § 265. See *Specificatio*.

The Romans did not use the word *accessio* to denote the title arising from the addition of one thing to another, but understood by it the thing itself which comes to

be joined to another. 1 *Mack. Civ. Law*, 279, § 266, note (d). *Id.* 155, § 153.

**ACCESSION.** [Lat. *accessio*, q. v.] A species of title by which a person acquires a right to, or property in a thing, in consequence of its *belonging* to another thing; as by growing out of it, or being added to, or combined with it.\* See *Accessio*. A principle derived from the civil law, by which the owner of property becomes entitled to all which it produces, and to all that is added or united to it, either naturally or artificially, (that is, by the labor or skill of another,) even where such addition extends to a change of form or materials: and by which, on the other hand, the possessor of property becomes entitled to it, as against the original owner, where the addition made to it by his skill and labor, is of greater value than the property itself, or where the change effected in its form is so great as to render it impossible to restore it to its original shape.\* 2 *Kent's Com.* 360—365. *Bract.* fol. 9, 10. *Code Civil*, No. 546, 547. *Civil Code of Louisiana*, Art. 490. See *Accessio*.

**ACCESSORIUM.** Lat. [from *accedere*, to go to, or with.] Accessory, incident; that which goes with another thing; that which belongs to, is connected with, or dependent upon another thing, as its principal, (*res principalis*.)\* *Cowell. Bract.* fol. 22 b.

**Accessorium non ducit sed sequitur suum principale.** The incident does not draw, but follows its principal. *Co. Litt.* 152 a. 151 b. *Broom's Max.* 203. The incident passes by the grant of the principal, as rent by the grant of a reversion, and not *à converso*. 2 *Bl. Com.* 176.

**ACCESSORIUS.** L. Lat. [from *accedere*, q. v.] Accessory, incident; that which belongs to something else. *Res accessoria*; an accessory thing. 1 *Mackeld. Civ. Law*, 155, § 152. See *Accessorium*.

**ACCESSORIUS.** L. Lat. [from *accedere*, q. v.] An accessory, or accessory. **Accessorius sequitur naturam sui principalis.** An accessory follows the nature of his principal. 3 *Inst.* 139. An accessory cannot be guilty of a higher crime than his principal.

**Accessorius sequitur principalem.** An accessory follows, or depends upon the principal. 4 *Co.* 44. Where there is no principal, there can be no accessory.

**ACCESSORY.** [L. Lat. *accessorius, accessorium*, qq. v.] Incident, appurtenant, or belonging to. When a subject is conveyed, every one of its accessories are understood to be conveyed with it, unless the contrary be expressed. 1 *Kames' Equity*, 240. *Accessorial* is sometimes used in this sense. *Story on Bailment*, § 54.

**ACCESSORY.** In criminal law. Contributory to, or aiding in the commission of a crime. Called in the Roman law, *ope et consilio*, and in the Scotch law, *art and part*. (qq. v.) *Ersk. Inst.* b. 4, tit. 4, § 10. More commonly written *accessary*, especially when used as a substantive. See *Accessary*.

**ACCESSUS.** Lat. [from *accedere*, to go to.] Access, approach, admission, ingress; the liberty of going into a place. *Accessus et recessus*; the liberty of going on and off another's land, for the purpose of hunting, drawing water, &c. *Bract.* fol. 231 b. 232. The same liberty, as applied to the enjoyment of a right of common, was called *ingressus et egressus*, ingress and egress; a phrase still in use. *Id. ibid.* See *Ingress, Egress*.

**ACCIDENT.** [L. Lat. *accidens*, from *accidere*, to fall, to happen.] A casualty; an act of providence; an event that takes place without one's foresight or expectation. See *Inevitable accident, Act of God, Casualty*. In equity. Any such unforeseen event, misfortune, loss, act or omission, as is not the result of any negligence or misconduct.\* 1 *Story's Eq. Jurispr.* § 78.

**ACCION, Accyoun.** L. Fr. An action. *Kelham.* *Accion sur le cas*; an action on the case.

**ACCO.** L. Lat. An abbreviation for *actio*. *Towns. Pl.* 26. *Acconem* for *actionem*. *Id.* 166, 167.

**ACCOLA.** L. Lat. A husbandman, an agricultural tenant; a tenant of a manor. *Spelman*.

**ACCOMMODARE.** Lat. To lend, or loan. *Si tibi vendam quod tibi accommodavi*; if I sell you that which I have loaned to you. *Bract.* fol. 41 a.

**ACCOMMODATION PAPER.** In mercantile usage. A bill or note drawn, accepted, or endorsed by one person for another, there being no consideration between

them, for the sole purpose of raising money upon it, for the accommodation of one or both of them.\* *Story on Bills*, § 187. Accommodation paper is now governed by the same rules as other paper. 3 *Kent's Com.* 86, and note, *ibid.*

**ACCOMPLIAMENTUM.** L. Lat. Accomplishment. *Co. Entr.* 227. *Towns. Pl.* 49.

**ACCOMPLICE.** [from *ad*, to, and *complicare*, to fold up, or wrap together.] In criminal law. One who is joined or united with another; one of several concerned in a felony; an associate in a crime; one who co-operates, aids, or assists in committing it. *Tomlins. Jacob.* This term includes all the *participes criminis*, whether considered in strict legal propriety as principals, or as accessories. 1 *Russell on Crimes*, 26. It is generally applied to those who are admitted to give evidence against their fellow criminals. 4 *Bl. Com.* 331. *Hawk. P. C.* b. 2, c. 37, § 7.

**ACCOMPT.** See *Account*.

**ACCORD.** Fr. & Eng. An agreement, consent, or concurrence. An agreement between a party injuring and a party injured, to make satisfaction for the injury; which, when performed, is a bar of all actions upon the account.\* 3 *Steph. Com.* 373. As if a man contract to build a house, or deliver a horse, and fail in it, this is an injury for which the sufferer may have his remedy by action; but if the party injured accepts a sum of money, or other thing as a satisfaction, this is a redress of that injury, and entirely takes away the action. 9 *Co.* 79. 3 *Chitty's Bl. Com.* 16, and note. *Blount. Bac. Abr. Accord. Com. Dig. Accord.*

**ACCOUNT, Accompt.** [L. Lat. *computus*, from *computare*, to account.] In practice. A writ, or action at common law, (sometimes called *account render*,) which lies against a person who by reason of his office, or business, as bailiff, receiver, or guardian, ought to render an account to another, but refuses to do so. *F. N. B.* 116. *P. Q. Co. Litt.* 172. The writ in this action (which is termed in the old books, *breve de computo*,) commands the defendant to render a reasonable account (*rationabile computum*,) to the plaintiff, or show the court good cause to the contrary. *Reg. Orig.* 135. *F. N. B.* 116, 117. If the plaintiff succeeds, there are two judgments; the first is that the defendant *do account*,



(*quod computet*), before auditors appointed by the court, and, when such account is finished, then the second judgment is that *he do pay* the plaintiff so much as he is found in arrear. 3 *Bl. Com.* 162.

The action of account was formerly the common remedy in mercantile transactions, and in almost all cases where there were dealings, and an unliquidated demand. 3 *Reeves' Hist. Eng. Law*, 77. In modern practice it has fallen into great disuse, in consequence of the substitution of the action of assumpsit, and the frequent resort to a court of equity. 3 *Bl. Com.* 163. 1 *Tidd's Pr.* 1, 2. 1 *Archb. N. Prius*, 196, 197. It seems, however, to have always been regarded with favor by the English judges, and in the case of Godfrey v. Saunders, in the C. B., where an action of this kind was brought, Lord C. J. Wilmot expressed his satisfaction at seeing it revived. 3 *Wils.* 94, 117. Very recently it has been revived in England to a considerable extent, in consequence of a decision of the court of exchequer, in relation to the exception of merchants' accounts in the statute of limitations. 8 *Mees. & W.* 769. *Smith on Contracts*, 301, 302, 321, and notes. It is retained in the practice of some of the United States, but its form has been modified, and, in general, it is rarely resorted to: in some of the states it has been expressly abolished. 4 *Kent's Com.* 359, note. 1 *Story's Eq. Jur.* § 442, and note. *Rev. Stat. of N. Jersey*, 46. *Rev. Stat. of Vermont*, 219, c. 36. *Rev. Stat. of Mass.* c. 118, § 43. See *United States Digest*, Account render.

**ACCOUNT CURRENT.** A running, or open account. See *Account stated*.

**ACCOUNT STATED.** An account balanced and rendered, with an assent to such balance, express or implied. Parker, C. J. 8 *Pick. R.* 187, 193. An account current sent by a foreign merchant to a merchant in this country, and not objected to for two years, is deemed an account stated, and throws the burden of proof upon him who received and kept it without objection. 7 *Cranch*, 147. But an account closed by the cessation of dealings between the parties, is not an account stated. 5 *Cranch*, 15. 8 *Pick. ub. sup.* See *Insimul computassent*.

**ACCREDULITARE.** L. Lat. To purge an offence by oath. *Blount*.

**ACCRESCE.** In Scotch law. To accrue. See *Accrescere*.

**ACCRESCE.** Lat. [from *ad*, to, and *crescere*, to grow; L. Fr. *acresser*.] To grow to, to pass, or be added to a person, or thing; to accrue. In Scotch law, literally translated to *acresce*. 1 *Kames' Equity*, 247. *Jus accrescendi*; (q. v.) the right of accretion, or accruer, the right by which a thing passes or accrues from one to another, especially from a deceased person to those who survive him; hence called the right of survivorship. *Pars decedentis accrescere debet superstitibus, per jus accrescendi*; the portion of the deceased ought to accrue to the survivors by the right of accruer, or survivorship. *Bract.* fol. 28. See *Id.* fol. 77 b. 262 b.

To accrue; to grow or arise; to begin to have existence. *Actio non accrevit infra sex annos*; (q. v.) the action did not accrue within six years. 3 *Chitt. Pl.* 941.

**ACCRESSER.** L. Fr. To increase, or accrue. See *Accrescere*.

**ACCRETION.** [Lat. *accretio*, from *acrescere*, to grow to.] A growing to, adding to, increasing. Most commonly applied to the gradual and imperceptible accumulation and formation of soil, or land, out of the sea, or a river. 3 *Kent's Com.* 428. See *Alluvion*.

**ACCROACH, Accroche.** [Fr. *accrocher*, to hook, clasp, or grapple to; to pull or draw to.] To attempt to exercise. 4 *Bl. Com.* 76. 1 *Hal. P. C.* 80. 2 *Reeves' Hist. Eng. Law*, 451. 3 *Id.* 186. *Accroaching* of royal power was a usual charge of high treason anciently, though a very uncertain charge. 1 *Hal. P. C. ub. sup.*

To exercise without authority: to usurp authority. *Stat.* 13 Ric. II. st. 1. 3 *Reeves' Hist. Eng. Law*, 197.

To delay. *Accrocher un proces*; to stay the proceedings in a suit. *Cowell. Blount*.

**ACCROCHER.** See *Accroach*.

**ACCRUE.** [Lat. *accrescere*.] To grow to, to follow, to be added to; as a thing or right passes from one person to another. See *Accrescere*.

To grow, arise, accumulate, or become due; as rent or interest.

To arise, or begin to have a legal existence; as an action *accrues* when the plaintiff has a right to commence it. See *Accrescere*.

**ACCUSARE.** Lat. To accuse, or charge. *Accusare nemo se debet nisi coram Deo*. No man is bound to accuse himself, unless before God. *Hardr.* 139.

**ACCUSTOMATUS**, *Accustomatus*. L. Lat. Accustomed. *Co. Entr.* 69. *Rast. Entr.* 657. *Towns. Pl.* 26, 49.

**ACENSEMENT**. L. Fr. A letting to farm. *Kelham*.

**ACENSEUR**. L. Fr. A farmer. *Id.*

**ACEPHALI**. Lat. [from Gr. α, without, and κεφαλή, a head.] Levellers in the reign of Henry I., who acknowledged no head, or superior. *Cowell*.

Persons so poor that they had not a tenement by which they might acknowledge a superior lord. *Ducange. Whishaw*.

**ACER**. L. Lat. An acre. *Spelman. See Acra*.

**AC ETIAM**. L. Lat. And also. The name of a clause in a *capias ad respondendum*, so called from its initial words. See *Ac etiam billæ*. Anciently sometimes written as one word, *acetiam*, and *aceciam*. *Towns. Pl.* 49. 2 *Stra.* 922.

**AC ETIAM BILLÆ**. L. Lat. And also to a bill. The initial words of a clause inserted in a writ of *capias ad respondendum*, where bail is required, in order to express the true cause of action; the writ requiring the defendant "to answer the plaintiff of a plea of trespass; And also to a bill of the plaintiff" against the defendant, for whatever the real cause of action may be. 3 *Bl. Com.* 288. *Id.* Appendix, No. III. Sect. 3. See *Capias ad respondendum*. This clause is now dispensed with, in the process of the English courts. *Stat. 2 Will. IV. c. 39. See Bill*.

**ACHATE**, *Achat, Achet, Acate*. L. Fr. [from *achater*, to buy.] A purchase, contract or bargain. *Bro. Abr. Contract. Per colour de achate*; by color of purchase. *Stat. Westm. I. c. 1*.

**ACHATER**, *Acater*. L. Fr. To buy. *Si le villein achate biens*; if the villein buy goods. *Litt. sect.* 177.

**ACHATOR**, *Achatour, Achetour, Acatur*. L. Fr. [from *achater*, to buy.] A buyer, a contractor. Purveyors were, by statute 36 Edw. III. st. 1, c. 2, ordained to be thereafter called *achetours*, or buyers. 2 *Reeves' Hist. Eng. Law*, 370. *Parnours, purveyours, ou achatours*; takers, purveyors or buyers. *Artic. sup. chart. c. 2*.

**ACHERSET**. An ancient measure of

corn or grain, supposed to be about eight bushels. *Cowell*.

**ACHESON**. See *Encheson*.

**ACKNOWLEDGMENT**. In conveying. The act by which a party who has executed an instrument, declares or acknowledges it before a competent officer, to be his, or her act and deed.

**ACKNOWLEDGMENT MONEY**. A sum of money paid by copyhold tenants, in some parts of England, on the death of their landlords, as an acknowledgment of their new lords. *Cowell. Holthouse*.

**ACQUEST**. See *Acquisitum*.

**ACQUETS**. Fr. In the civil law. Property which has been acquired by purchase, gift, or otherwise than by succession. *Bouvier*.

Profits, or gains. *Civil Code of Louisiana*, § 2369.

**ACQUIETANTIA**, *Acquietancia*. L. Lat. [from *acquietare*, q. v.] An acquittance; a release or discharge from the obligation of a debt or contract, (*solutio a vinculo debiti, stipulationis, vel obligationis, quo quis alteri tenetur.*) *Spelman*.

The instrument itself, (*symbolum ipsum*), by which such discharge is effected. *Id.* Sometimes called *litera acquietantiæ*; a letter of acquittance. *Reg. Orig.* 150.

Exemption or freedom from a service or duty. *Consuetudines et servitia de quibus illi nunquam acquietantiam habuerint. Bract. fol. 27 b. Acquietancia de shiris et hundredis*; the privilege of being free from suit and service in shires and hundreds. *Cowell*.

**ACQUIETARE**. L. Lat. [from *ad*, to; and *quietare*, to discharge; *quietum reddere*, to make quit, or quiet, i. e. content, or free from molestation; to give quiet, or keep in quiet, so that one may have no cause for further or future apprehension; to put at rest.] To acquit; to discharge or release from a debt. *Spelman, voc. Acquietantia. Quod acquietet B. de viginti solidis*; that he acquit B. of twenty shillings. *Reg. Orig.* 158 a.

To acquit; to pronounce, or declare innocent of a crime or charge. See *Acquietatus, Acquit*.

To keep quiet, or quit; to preserve or protect from molestation, as from demands for services not due. *Acquietabimus*, (we will acquit,) was one of the formal words in

the clause of warranty, with which the old charters concluded. By this word the donor bound himself and his heirs to *acquit* the tenant, if any one should demand more or different service than what was contained in the charter. *Bract.* fol. 37 b. *Warrantizare*, *acquietare et defendere*; to warrant, acquit and defend. *Id.* fol. 30 a.

**ACQUIETATUS.** L. Lat. [from *acquietare*, q. v.] Acquitted; discharged; released from a criminal charge; pronounced innocent by a jury. *Reg. Orig.* 134. 9 Co. 56. *Cro. Car.* 420. This word had the peculiar meaning of a discharge by a jury, (*per pais*), from a very early period. *Reg. Orig.* 134 b, nota.

**ACQUISITUM, Adquisitum.** L. Lat. [from *acquirere*, to acquire, or purchase.] A purchase. 2 *Mon. Angl.* 380. *Towns. Pl.* 50.

**Acquest**, or newly acquired feudal rights. 1 *Reeves' Hist. Eng. Law*, 29. See *Conquest*.

**ACQUIT.** [L. Fr. *acquiter*, *quiter*; L. Lat. *acquietare*, q. v.] To free, clear or deliver from accusation. See *Acquittal*.

To discharge from obligation, properly in writing. See *Acquittance*.

To protect from molestation, or trouble. In the old common law, to see that a tenant be safely kept from any entries, or other molestation, for any manner of service issuing out of land, to any lord that is above the mesne. *Co. Litt.* 100 a. *Litt.* sect. 142.

**ACQUITTAL, Acquitat.** A judicial deliverance from an accusation of guilt; a deliverance or setting free from a criminal charge by the process of a trial at law, and the verdict of a jury, pronouncing the party not guilty.\* 4 *Bl. Com.* 361. 1 *Nev. & Man.* 36. See *Acquietatus*.

Exemption from entry and molestation by a superior lord, for services issuing out of lands. *Co. Litt.* 100 a. *Cowell.* See *Acquietantia*.

**ACQUITTANCE.** [L. Lat. *acquietantia*, q. v.] A discharge in writing of a sum of money, or debt due, duty agreed to be performed, or any other obligation. *Spelman*, voc. *Acquietantia*. *Cowell. Termes de la ley. Shep. Touchst.* 347. Applied as well to the act, as to the instrument by which it is effected. See *Acquietantia, Receipt, Release*.

**ACRA.** [pl. *acrae*.] L. Lat. An acre.

*Spelman. Co. Litt.* 5 b. *Towns. Pl.* 26. 196. In *Bokenhale*, duas carucatas terræ, et dimidiam, et 26 acras prati, et 50 acras silvæ, et 70 acras de brushe. In *Bokenhale*, two carves and a half of arable land, and twenty six acres of meadow, and fifty acres of wood, and seventy acres of brush. *Charta Edredi Regis*, A. D. 948. *Spelman. Do tibi decem acras in tali loco*; I give you ten acres in such a place. *Bract.* fol. 16 a.

**ACRE.** [Lat. *jugerum*; L. Lat. *acra*, *acer*, from Sax. *æcer*, from Lat. *ager*, a field. *Spelman.*] A measure of land containing forty perches in length, and four in breadth; or according to that proportion, be the length more or less; making an area of one hundred and sixty perches. *Ord. de admens. terræ*, 35 *Edw. I.* st. 1. *Stat.* 24 *Hen. VIII.* c. 4. *Crompt. Jurisd.* 222. *Cowell.* Declared by statute, in New-York, to be equal to a rectangle sixteen perches in length and ten in breadth, making the same area. 1 *N. Y. Rev. Stat.* [607,] 617, § 7. See *Sergeant's Land Laws*, 185. See *Perch*.

Originally the word *acre*, (*acer*, *aker*, or Sax. *æcer*), was not used as a measure of land, or to signify any determinate quantity of land, but to denote any open ground, (*latum quantumvis agrum*), wide champaign, or field; which is still the meaning of the German *acker*, derived probably from the same source, and is preserved in the names of some places in England, as *Castle Acre*, *South Acre*, &c. *Spelman.* See *Acrefight*. When the word came to be applied as a measure of ground, the quantity denoted by it was still various, until determined by the English statutes above referred to. *Kennett's Paroch. Ant.* 534. *Cowell.* At the great Domesday inquisition, the common pasture in England seems to have been measured by *hides*, the arable land by *carucates*, or carves, and the meadow by *acres*. *Id.*

**ACREFIGHT or ACRE.** [Sax. *æcerfeoght*, from *æcer*, a field, and *feoght*, fight.] A camp or field fight: a sort of duel, or judicial combat, anciently fought by single combatants, English and Scotch, between the frontiers of the two kingdoms with sword and lance. Called *campfight* and the combatants *champions*, (L. Lat. *campiones*, from *campus*), from the open field that was the stage of trial. *Cowell.*

**AC SI.** Lat. As if. *Towns. Pl.* 23. 27.

ACT. [Lat. *actus*, *actum*; from *agere*, to do.] A thing done; the deed of an individual. See *Actus*, *Actum*.

A thing done, or business formally transacted by a public body, and always expressed in writing; especially, a legislative proceeding: a written law, formally ordained or passed by the legislative power of a state, called in England an *act of parliament*, and in the United States an *act of congress*, or of the *legislature*: a statute.\* See *Statute*.

A judicial proceeding; a thing done by a court, and expressed in writing.\* See *Acta*. In Scotch law, the orders and decrees of a court, and in French and German law, all the records and documents in an action, are called *acts*. *Encyclop. Americ.* See *infra*.

A thing done in writing before a public officer, as a notary; the record of such a thing; a notarial, or other public instrument.\* See *Acta*, *Ab actis*.

Any instrument in writing to verify facts. *Webster*. *Bouvier*.

ACT IN PAIS. L. Fr. & Eng. An act in the country, as distinguished from an act in court; an act which is not a matter of record, or done in a court of record. 2 *Bl. Com.* 294. *Story on Agency*, § 25, note. See *In pais*.

ACT OF BANKRUPTCY. An act done or suffered by a trader, tending to defraud his creditors, (as by endeavoring to avoid them, or evade their just demands,) by which he becomes a *bankrupt*, within the meaning of the bankrupt laws, and liable to be proceeded against as such. 2 *Bl. Com.* 477. See *Bankruptcy*, *Bankrupt*.

In English law, the following acts, when committed by a person who *trades*, within the meaning of the bankrupt laws, are acts of bankruptcy: 1. Departing the realm: 2. Being out of the realm, and remaining abroad: 3. Departing from his dwelling house, or otherwise absenting himself: 4. Beginning to keep his house: 5. Suffering himself to be arrested for any debt not due: 6. Yielding himself to prison: 7. Suffering himself to be outlawed: 8. Procuring himself to be arrested: 9. Procuring his goods, money, or chattels, to be attached, sequestered, or taken in execution: 10. Making or causing to be made within the realm, or elsewhere, any fraudulent grant or conveyance of any of his lands, tenements, goods or chattels: 11. Making or causing to be made any fraudulent surrender of any of his copyhold lands or tene-

ments: 12. Making or causing to be made any fraudulent gift, delivery, or transfer of any of his goods, or chattels. 2 *Steph. Com.* 196; and see *Id.* 197. *Wharton's Lex.*

The following acts were designated by the late bankrupt act of the United States, as acts of bankruptcy: 1. Departing from the state, district, or territory of which the trader is an inhabitant, with intent to defraud creditors: 2. Concealment to avoid being arrested: 3. Willingly or fraudulently procuring himself to be arrested, or his goods and chattels, lands or tenements to be attached, distrained, sequestered or taken in execution: 4. Removal or concealment of goods, chattels, and effects, to prevent their being levied upon, or taken in execution, or by other process: 5. Making a fraudulent conveyance, assignment, sale, gift, or other transfer of his lands, tenements, goods, chattels, credits, or other evidences of debt. *Act of Congress*, August 19, 1841, § 1. *Owen on Bankruptcy*, 15—28.

ACT OF CONTRAVENTION. In Scotch law. The act of breaking through any restraint imposed by deed, by covenant, or by a court. *Kames' Equity*, Pref. 1 *Id.* 228.

ACT OF CURATORY. In Scotch law. The act extracted by the clerk, upon any one's acceptance of being curator. *Forbes' Inst.* part 1, b. 1, ch. 2, tit. 2. 2 *Kames' Equity*, 291. Corresponding with the order for the appointment of a guardian, in English and American practice.

ACT OF GOD. [Lat. *actus Dei*; Fr. *Dieu son acte*.] Inevitable accident, or casualty; any accident produced by any physical cause which is irresistible, such as lightning, tempests, perils of the seas, an inundation, or earthquake; and also the sudden illness or death of persons. *Story on Bailment*, § 25. 2 *Bl. Com.* 122. *Broom's Max.* 108. 2 *Crabb's Real Prop.* 825, § 2176. Sir William Jones objects to the use of this phrase as made too familiar by habit, and as bordering on irreverence, and suggests the substitution of the expression *inevitable accident*. *Jones on Bailments*, 104. *Story on Bailm.* § 489.

ACT OF SETTLEMENT. In English law. The statute of 12 & 13 Will. III. c. 2, by which the crown of Great Britain was limited to the present royal family. 1 *Bl. Com.* 128. 2 *Steph. Com.* 490.

ACT OF UNIFORMITY. In English law. The statute of 13 & 14 Car. II. c. 4, enacting that the book of common prayer

as then recently revised, should be used in every parish church, and other place of public worship, and otherwise ordaining a uniformity in religious services, &c. 3 *Steph. Com.* 104.

**ACT OF UNION.** In English law. The statute of 5 Anne, c. 8, by which the articles of union between the two kingdoms of England and Scotland were ratified and confirmed. 1 *Bl. Com.* 97.

**ACTA.** Lat. [pl. of *actum*, q. v.] Acts; doings, transactions; especially such of which a record is kept. The minutes or records of a court. *Actis insinuare*; to deposit among the records; to file. *Inst.* 4. 11. 3. *Acta sive irrotulationes*; acts or enrolments. *Bract.* fol. 1 b.

*Acta diurna, or publica*, in the Roman law, were the public registers or journals of the proceedings of the senate, assemblies of the people, courts of justice, &c. *Tacit. Annal.* v. 4. xii. 24. xiii. 31. These are thought to have resembled a modern newspaper. *Brande's Dict.*

Acts done, or contracts executed before notaries, of which a record is kept, are still sometimes called *acta*. In Louisiana, where a contract or other act is executed in a particular manner before a notary, the protocol, or original, remains in his possession *apud acta*, and the act is deemed what is technically called "an authentic act." Story, J., 9 *Peters' U. S. R.* 607, 625.

**Acta exteriora indicant interiora secreta.** Outward acts indicate inward, or secret purposes. 8 *Co.* 290, 291. Or, in Bract's language, *per exteriora præsumi poterit de interioribus*; by outward acts we may judge of [presume, or infer,] inward motives, or designs. *Bract.* fol. 42 a. The law, in some cases, judges of a man's previous intentions by his subsequent acts. Thus, where an entry, authority, or license is given to any one by the law, and he abuses it, he shall be a trespasser *ab initio*; the law judging by the subsequent act, *quo animo*, or with what intent he entered. 8 *Co., ub. sup.* *Broom's Max.* 139.

**ACTIO.** Lat. [from *agere*, q. v.] In the civil law. An action; the right of pursuing, or suing for what is due to one, in the peculiar mode or form termed *in judicio*, i. e. before a *judex*; (q. v.) or, in the later civil law, the right of pursuing one's due by process of law, or before a judicial tribunal. *Actio nihil aliud est quam jus persequendi in judicio quod sibi debetur*: an action is nothing else than the right of pursuing, in a court of justice,

that which is due to one. *Inst.* 4. 6. pr. This definition of the Institutes is copied, with a slight change in the order of the words, from the older definition of Celsus in the Digests: *Nihil aliud est actio quam jus quod sibi debeatur, judicio persequendi*; which may be translated in precisely the same language, with the exception of the word *judicio*, which has the sense of a proceeding before a *judex*, already noticed. *Dig.* 44. 7. 51. Bracton adopts it, with a change in two words only, (*actio nihil aliud est quam jus prosequendi in judicio quod alicui debetur*), accompanying it with a commentary intended to adapt it to the English law of his time. *Bract.* fol. 98 b. Later writers have endeavored to accommodate it still more closely to the English system, as will be explained under another head. See *Action*.

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The precise nature of the Roman *actio* cannot well be understood from the very general definition of the civil law, (which, it will be seen, describes it not as a proceeding, but as a *right*), without some explanation. And first, as to the peculiar meaning of the expression *in judicio*, it will be necessary to observe that the proceedings in civil causes, under the old Roman system, were always conducted before two different judicial officers; the *prætor*, or magistrate, before whom the parties (*actor* and *reus*) appeared, and stated the case and defence; and the *judex*, a private person appointed by the prætor, to investigate the facts and decide the cause, according to a written formula of instructions. See *Judex*. Hence arose the division of the proceedings into two stages; those before the prætor, which were said to be *in jure*, and those before the *judex*, which were said to be *in judicio*. *Gaius*, iv. § 119. 1 *Kaufm. Mackeld. Civ. Law* 187, note. The *actio* itself, under the earliest system of what were termed *actiones legis*, (q. v.) was a formula for which the *actor* or plaintiff applied to the prætor, at the commencement of the proceedings, and which the latter, in his discretion, allowed, (*actionem dabat*.) In its general objects it resembled, or at least corresponded with the original writ of the English system, and from the manner in which it is always contrasted with the *exceptio*, (a formula on the part of the defendant answering nearly to the modern plea,) seems to have partaken also of the nature of the English count, or declaration. *Actionis verbo non continetur exceptio*, (under the word *actio*, an *exceptio* is not included,) is a maxim of the Digests. *Dig.* 50. 16. 8. Like the original writ, the

*actio* lay at the foundation of the proceedings, was essential to their due institution, and gave the right to proceed in the particular case; and from this last circumstance may itself, not unaptly have been termed the right of pursuing, or *jus persequendi*, &c. It should not be overlooked, however, that notwithstanding the express words (*nihil aliud*) of the definitions already given, the *actio* was practically regarded as something else than a mere *jus*, or right; it was not only a *jus persequendi*, but the *persecutio* itself. *Actionis verbo etiam persecutio continetur*. Dig. 50. 16. 34.

The epithet *jus* seems more appropriately to belong to the proceeding by *formula*, which took the place of the *actiones legis*, when the latter were abolished. This formula, which, like the technical *actio*, was obtained from the prætor by the plaintiff, appears to have combined the qualities, or something like the qualities of the writ, pleadings, and *nisi prius* record of the English practice; concluding with the appointment of a *judex*, to try the cause, and an express direction to him how to decide it, as the facts might appear. *Gaius*, iv. § 40—47. 1 *Spence's Chancery*, 210, 216, 251. It evidently constituted the plaintiff's warrant for proceeding before the *judex*, or in *judicio*, and therefore may well have been defined *jus persequendi in judicio*.

Before the time of Justinian, the practice of appointing a *judex* had been laid aside; the investigation of the facts and decision of the cause being given to the same officer before whom the proceedings were originally commenced. 1 *Kaufm. Mack. Civ. Law*, 188, note. There had ceased therefore to be any proceeding in *judicio*, in the proper technical sense of the term. And yet the ancient definition, framed doubtless with reference to that proceeding, was adopted by Justinian almost in *hæc verba*. This may be explained by the supposition that the word *judicium* had, by that time, acquired the larger sense of judicial investigation, procedure, or process in general, just as *judex* had exchanged its technical meaning, (a private person appointed by the prætor to investigate the facts of the case, and decide it according to certain instructions,) for that of a public judge, having undivided control of the cause from beginning to end. See *Judicium, Judex*.

Bracton, as has been observed, adopts the definition of Justinian almost literally, giving to the word *jus* the full meaning of right, and to *judicium* the general sense of a judicial procedure, or process of law. *Bract.* fol. 98 b. The same author, how-

ever, uses *judicium* in numerous other passages, in the sense of a court, and as the synonyme of *curia*. See *Judicium*. In *judicio*, therefore, in his definition, if not in that of the Institutes, may not improperly be translated "in a court of justice," "before a judicial tribunal."

**ACTIO.** Lat. In ancient English law an action; otherwise termed, *placitum*, and sometimes *loquela*. *Placitum sive actio*. *Bract.* fol. 102 b. See *Action*. *Actio non datur non damnificato*; an action is not given to one who is not injured. *Jenk. Cent.* 69. *Actio qualibet it sua via*; every action proceeds in its own course. *Id.* 77.

**ACTIO.** L. Lat. In mediæval law. An office. *Actio comitatus*; the office of count. *Marculf. Form.* lib. 1. *Spelman*.

**ACTIO NON ACCREVIT INFRA SEX ANNOS.** L. Lat. The action did not accrue within six years. The emphatic words of the old plea of the statute of limitations, literally translated in the modern forms, and retained as the distinctive name of the plea. 3 *Chitt. Pl.* 941. See *Non assumpsit infra sex annos*.

**ACTIO. NON.** L. Lat. In pleading. An abbreviation of *actionem non*, the emphatic words anciently used at the commencement of a special plea in bar; the defendant first averring generally, that the plaintiff "ought not to have or maintain his action," (*actionem non habere*.) and then proceeding to state the reason,—"because he says that, &c." Hence this whole preliminary formula, (literally translated in the modern forms,) has been technically termed the *actio. non*, or *actionem non*. *Steph. Plead.* 394, (Am. ed. 1824.) 3 *Chitt. Pl.* 906. By the late rules of the English courts, (Hil. T. 4 Will. IV. 1, s. 10,) this clause is dispensed with.

**ACTIO. NON ULTERIUS.** L. Lat. In English pleading. A name given to the distinctive clause in the new plea to the further maintenance of the action, lately introduced in place of the plea *puis darrein continuance*; the averment being that the plaintiff ought not further (*ulterius*), to have or maintain his action. *Steph. Pl.* 64, 65. 401.

**ACTIO AD EXHIBENDUM.** Lat. In the civil law. An action to compel the exhibition or production of a thing, together with what was called *rei causa*; under which was comprehended all that the claim-

ant of the thing could demand in addition thereto, and especially what he could have had if the thing had not been withheld from him. *Inst.* 4. 17. 3. *Id.* 4. 6. 31. 1 *Mackeld. Civ. Law.* 155, § 153.

**ACTIO ARBITRARIA.** In the civil law. An arbitrary action; one depending upon the discretion of the judge, (*ex arbitrio judicis pendens*;) or in which the judge was allowed to determine according to equity and the circumstances of the particular case, how satisfaction should be made to the plaintiff; (*permittitur judici ex bono et æquo, secundum cujusque rei de qua actum est naturam, æstimare quemadmodum actori satisfieri oporteat.*) If the defendant refused to conform to the decision of the judge, he might be condemned at discretion; (*nisi arbitrio judicis actori satisfaciatur,—condemnari debeat.*) *Inst.* 4. 6. 31.

**ACTIO BONÆ FIDELI.** In the civil law. An action of good faith; a species of equitable action *ex contractu*, in which the *judex* was allowed a discretionary power of determining upon principles of justice and equity, (*ex bono et æquo*), how much should be paid to the plaintiff, (*quantum actori restitui debeat*), of allowing a set off (*compensatio*), on the part of the defendant, and generally of taking into consideration the circumstances of the case, the intentions of the parties, and whatever was understood *ex fide bona*.\* *Inst.* 4. 6. 28. 30. *Heinecc. Elem. Jur. Civ. lib.* 4, tit. 6, §§ 1183, 1185. 1 *Mackeld. Civ. Law*, 194, § 197. These actions were also called *arbitria*, and the *judex*, *arbiter*; they were always brought for an *incertum*, (something indefinite or not ascertained,) and were distinguished from the *actiones stricti juris*, which were governed by strict rules, and were always directed to a *certum*. *Id. ibid.* See *Actio stricti juris*.

**ACTIO CIVILIS.** In the civil law. A civil action; an action founded on the *jus civile*, or proper Roman law, as distinguished from the *actio honoraria*, or prætorian action. All actions, in the Roman law, were, with respect to their origin, either civil or honorary, (*aut civiles dicuntur aut honorariae.*) *Dig.* 44. 7. 25. 2. A distinction corresponding with the modern division into actions *at law*, and actions *in equity*. 1 *Story's Equity Jur.* § 37.

**ACTIO CIVILIS.** In the common law. A civil action, as distinguished from a criminal action. Bracton divides personal actions into *criminalia et civilia*, according as they

grow out of crimes or contracts, (*secundum quod descendunt ex maleficiis vel contractibus.*) *Bract.* fol. 101 b.

**ACTIO COMMODATI.** See *Commodati Actio*.

**ACTIO COMMUNIS.** A common action. A term applied by Bracton to an action where the thing demanded was common, and not several. *Bract.* fol. 103.

**ACTIO COMMUNI DIVIDUNDO.** In the civil law. An action for *dividing* a common property, or thing held in common. *Inst.* 4. 6. 20. *Id.* 4. 17. 5. See *Communi dividundo*.

**ACTIO CONFESSORIA.** In the civil law. An affirmative action; an action founded upon the affirmative allegation of some right in the plaintiff in another's land, as a right of way, &c.; and not upon the denial of the right of another in his land.\* *Inst.* 4. 6. 2. *Confessoria dicitur, quia constituta est verbis affirmativis.* *Bract.* fol. 103. See *Actio negatoria*.

**ACTIO CONTRARIA.** In the civil law. A contrary or cross action, as distinguished from *actio directa*, (q. v.) *Heinecc. Elem. Jur. Civ. lib.* 3, tit. 15, §§ 805, 816, 826. *Bract.* fol. 103.

**ACTIO CRIMINALIS.** In the common law. A criminal action. *Bract.* fol. 102 b. See *Actio civilis*.

**ACTIO DE DOLO MALO.** In the civil law. An action of fraud; an action which lay for a defrauded person against the defrauder and his heirs, who had been enriched by the fraud, to obtain the restitution of the thing of which he had been fraudulently deprived, with all its accessions, (*cum omni causa*;) or, where this was not practicable, for compensation in damages. 1 *Mackeld. Civ. Law*, 221, § 217. *Heinecc. Elem. Jur. Civ. lib.* 4, tit. 6, § 1152. *Bract.* fol. 103 b.

**ACTIO DE IN REM VERSO.** In the civil law. An action concerning a thing *converted to the profit* of another; an action granted to one who had contracted with a son or slave, in order to recover whatever the father or master, by means of such contract, had converted to their own advantage. *Inst.* 4. 7. 4. *Heinecc. Elem. Jur. Civ. lib.* 4, tit. 7, § 1222. *Halifax Analysis*, b. 3, c. 2, n. 7.

**ACTIO DE PECULIO.** In the civil law. An action concerning, or against the *peculium*, or separate property of a party.\* An action to which fathers and masters were liable on the contracts of their children and servants, to the extent of the latter's *peculium*, patrimony, or separate estate. *Inst.* 4. 6. 10. *Id.* 4. 7. 4. *Heinecc. Elem. Jur. Civ. lib.* 4, tit. 7, § 1219.

**ACTIO DE PECUNIA CONSTITUTA.** In the civil law. An action for money engaged to be paid; an action which lay against any person who had engaged to pay money for himself, or for another, without any formal stipulation, (*nulla stipulatione interposita*).\* *Inst.* 4. 6. 9.

**ACTIO DIRECTA.** In the civil law. A direct action, in the stricter sense of the word *directus*; (q. v.) an action founded on strict law, and conducted according to fixed forms; called also *vulgaris*.\* 1 *Mackeld. Civ. Law*, 189, § 194. *Id.* 268, note.

An action on a contract made through an agent, brought between the immediate parties to the contract, that is, the agent and the other contractor. *Story on Agency*, § 163.

An action for an injury directly committed by a person with his own hand or body, (*si quis corpore suo damnum dederit*;) or where the act done is immediately, and not consequentially injurious.\* *Inst.* 4. 3. 16. All these are distinguished from the *actio utilis*. (q. v.)

An action brought to enforce an obligation, which is essential to a contract, and which therefore exists immediately after entering upon the same; as distinguished from *actio contraria*, or one brought for the payment of a counter claim. 1 *Mackeld. Civ. Law*, 191, § 195.

**ACTIO EX CONTRACTU.** In the civil and common law. An action of contract; an action arising out of, or founded on contract. *Inst.* 4. 6. 1. *Bract. fol.* 102. 3 *Bl. Com.* 117.

**ACTIO EX DELICTO.** In the civil and common law. An action of tort; an action arising out of fault, misconduct, or malfeasance. 1 *Mackeld. Civ. Law*, 191, § 195. 3 *Bl. Com.* 117. *Ex maleficio* is the more common expression of the civil law; which is adopted by Bracton. *Inst.* 4. 6. 1. *Bract. fol.* 102, 103.

**ACTIO EX EMPTO.** In the civil law. An action of purchase, or upon purchase;

an action which a buyer is entitled to maintain against a seller, in order to cause him to deliver possession of the thing sold; with its titles and fruits, and every thing dependent upon it. *Pothier, Contr. of Sale*, part 2, ch. 1, art. 5. *Inst.* 4. 6. 28. Otherwise called *actio empti*, or *empti*. *Heinecc. Elem. Jur. Civ. lib.* 3, tit. 24, § 912.

**ACTIO EX VENDITO.** In the civil law. An action upon sale; an action which a seller is entitled to maintain against a buyer, to recover the price of a thing sold and delivered. *Inst.* 4. 6. 28. *Heinecc. Elem. Jur. Civ. lib.* 3; tit. 24, § 915. Called *actio venditi*. *Id. ibid.*

**ACTIO EXERCITORIA.** See *Exercitoria actio*.

**ACTIO FAMILIÆ ERISCUNDÆ.** In the civil law. An action for the partition of an inheritance. *Inst.* 4. 6. 20. *Id.* 4. 17. 4. *Bract. fol.* 443 b. 444. See *Familias eriscundæ*.

**ACTIO FINIUM REGUNDORUM.** In the civil law. An action for the determination of boundaries between adjoining lands. *Inst.* 4. 17. 6. *Id.* 4. 6. 20. *Bract. fol.* 444. See *Finium regundorum*.

**ACTIO FURTII.** In the civil law. An action of theft; an action founded upon theft. *Inst.* 4. 1. 13—17. *Bract. fol.* 444. This could only be brought for the penalty attached to the offence, (*tantum ad poenam persecutionem pertinet*;) and not to recover the thing stolen itself, for which other actions were provided. *Inst.* 4. 1. 19.

**ACTIO HONORARIA.** In the civil law. An honorary, or prætorian action. See *Actio civilis*.

**ACTIO IN DUPLUM.** In the civil law. An action for the double value of a thing. *Inst.* 4. 6. 21, 23.

**ACTIO IN FACTUM.** In the civil law. An action upon the fact, or adapted to the fact; an action not confined to any particular formula, but founded on the peculiar circumstances of the case; and intended to meet cases to which other forms of action were not applicable.\* *Dig.* 19. 5. 1. pr. *Id.* 19. 5. 11. It resembled the action on the case of the common law. 1 *Kames' Equity*, 147.

**ACTIO IN PERSONAM.** In the civil



and common law. An action against the person; a personal action; an action founded on some personal liability, arising either out of contract, (*ex contractu*), or malfeasance, (*ex delicto*), as distinguished from an *actio in rem*, or one brought for the recovery of a thing, independently of any personal obligation. *Inst.* 4. 6. 1. *In personam actio est, quæ cum eo agimus qui obligatus est nobis ad faciendum aliquid, vel dandum*; an action in *personam* is one which we may bring against him who is bound to us, to do or to give some thing. *Dig.* 44. 7. 25. It was otherwise called *condictio*, *actio personalis*, and *judicium personale*. (qq. v.) *Id. ibid.* *Inst.* 4. 6. 8. in tit. *Id.* 4. 6. 15. *Id.* 4. 11. pr. and 1. The great leading division of actions into those in *rem* and in *personam*, was established by the civil law, and introduced into the law of England chiefly through Bracton, who adopts it in terms. *Bract.* fol. 101 b.

**ACTIO IN QUADRUPLUM.** In the civil law. An action for the quadruple value of a thing. *Inst.* 4. 6. 21.

**ACTIO IN REM.** In the civil and common law. An action for a thing; an action for the recovery of a thing possessed by another. *Inst.* 4. 6. 1. *In rem actio est per quam rem nostram quæ ab alio possidetur petimus, et semper adversus eum est qui rem possidet*; an action in *rem* is one by which we demand a thing belonging to us which is possessed by another, and it is always brought against him who has the thing in possession. *Dig.* 44. 7. 25. Otherwise called *vindicatio*. *Id. ibid.* *Inst.* 4. 6. 15. Bracton confines this description of actions to those brought for the recovery of some immovable, corporeal thing, (*res corporalis immobilis*), as land, (*fundum aliquem vel terram*), or some right therein, (*jus quod rei adhaereat*). *Bract.* fol. 102. Hence the meaning of the term real action (*actio realis*, q. v.) in the common law.

An action directed against a thing, out of which the party bringing it seeks to obtain satisfaction, instead of proceeding against the person.\* Thus, in the courts of admiralty, where a vessel is libelled for the purpose of obtaining satisfaction of some claim, or on the ground of forfeiture, it is said to be a proceeding in *rem*, not touching the person. 3 *Dallas' R.* 297. 1 *Kent's Com.* 373. *Id.* 367, note. 3 *Id.* 196.

**ACTIO IN SIMPLUM.** In the civil law. An action for the single value of a thing. *Inst.* 4. 6. 21, 22.

**ACTIO IN TRIPLUM.** In the civil law. An action for the triple value of a thing. *Inst.* 4. 6. 21, 24.

**ACTIO INDIRECTA.** An indirect action. A species of action mentioned by Bracton, probably the reverse of the *actio directa*, (q. v.) *Bract.* fol. 103 a.

**ACTIO INJURIARUM.** In the civil law. An action for injuries done by beating, wounding, slanderous language, libel, and the like. *Inst.* 4. 4. pr. 1, 12. *Bract.* fol. 103 b. See *Injuria*.

**ACTIO INSTITORIA.** See *Institoria Actio*.

**ACTIO LEGIS AQUILÆ.** In the civil law. An action under the Aquilian law; an action to recover damages for maliciously or injuriously killing or wounding the slave or beast of another, or injuring in any way a thing belonging to another. Otherwise called *damni injuriæ actio*. *Inst.* 4. 3. *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 3. *Hali-fax Anal.* b. 2, c. 24. *Bract.* fol. 103 b.

**ACTIO LOCATI.** In the civil law. An action which lay for the letter (*locator*) of a thing against the hirer, where the terms of the contract were not complied with by the latter. *Inst.* 3. 25. pr. *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 25, § 928.

**ACTIO MIXTA, or MISTA.** In the civil law. A mixed action; an action brought for the recovery of a thing, or compensation for damages, and also for the payment of a penalty; partaking of the nature both of an *actio in rem*, and in *personam*. *Inst.* 4. 6. 16, 18, 19, 20. 1 *Mackeld. Civ. Law*, 193, § 196.

An action in which each party is actor, or plaintiff; such as the actions *finium regundorum*, *familia erciscundæ*, *communi dividundo*, and others. *Dig.* 47. 7. 37. 1.

Bracton adopts both these significations, describing the *actio mixta*, in the first sense, as one which claims a thing itself, and a penalty for its unjust detention, (*persequitur rem ipsam, et poenam propter injustam detentionem*). *Bract.* fol. 102 b. 372 a. Hence the mixed action of the common law. See *Mixed action*.

**ACTIO NEGATORIA, or NEGATIVA.** In the civil law. A negatory or negative action; an action founded on the denial (*negatio*) of another's right; as where a right of way, or other servitude in a particular estate is denied. *Inst.* 4. 6. 2. *Bract.* fol.

103 a. *Heinecc. Elem. lib. 4, tit. 6, § 1136.*  
*Halifax Anal. b. 3, c. 1, n. 8.* See *Actio*  
*Confessoria.*

#### ACTIO NEGOTIORUM GESTORUM.

In the civil law. An action upon, or on account of *business done*. An action given in cases where a person transacted the business of another during his absence, (*cum quis negotia absentis gesserit*), or without a commission, or authority, (*sine mandato*.) *Inst. 3. 28. 1.* This was of two kinds; a direct action, which lay for the person whose business had been transacted, against him who had transacted it, (*domino rei gestæ adversus eum qui gessit*), and a cross action, which lay for the *negotiorum gestor*, as he was called, against the other. *Id. ibid. Heinecc. Elem. lib. 3, tit. 28, §§ 973, 974.* See *Negotiorum gestor*.

#### ACTIO NOXALIS.

In the civil law. A noxal action; an action which lay against a master for a crime committed, or injury done by his slave; and in which the master had the alternative either to pay for the damage done, or to deliver up the slave to the complaining party. *Inst. 4. 8. pr. Heinecc. Elem. lib. 4, tit. 8. Halifax Anal. b. 3, c. 2.* So called from *noxa*, the slave or offending person, or *noxia*, the offence or injury itself. *Inst. 4. 8. 1.*

#### ACTIO PERPETUA.

In the civil law. A perpetual, or unlimited action; one not limited to any particular period within which it should be brought.\* *Inst. 4. 12. pr.* The opposite of the *actio temporalis*, (q. v.)

#### ACTIO PERSONALIS.

In the civil and common law. A personal action. The ordinary term for this kind of action in the civil law is *actio in personam*, (q. v.) the word *personalis* being of only occasional occurrence. *Inst. 4. 6. 8. in tit. Id. 4. 11. pr. 1.* Bracton, however, uses it freely, and hence the *personal action* of the common law. *Bract. fol. 102 a. 159 b.* See *Personal action*.

#### Actio personalis moritur cum persona.

A personal [right of] action dies with the person. *Noy's Max. c. 1, max. 14.*

This maxim is not now understood in the general sense which the terms of it appear to convey, having long been restricted in its application to that description of personal actions which are founded in tort, and are in form *ex delicto*. *Broom's Max. 404.* And even in regard to these, its application has been still further narrowed, from time to time, by legislative provisions giving rights

of action to, and against the representatives of deceased persons, for injuries done to, or in respect of property. So that the principle embodied in the maxim is now strictly true only in cases where a tort is committed against the person, as by assault, battery, libel, slander and the like. *Id. ibid. 404—407. 3 Bl. Com. 302. Shep. Touch. 481. Stat. 4 Edw. III. c. 7. Stat. 3 & 4 Will. IV. c. 42. 2 N. Y. Rev. St. [114] 51, §§ 4—6. Id. [447] 365, § 1, 2.* That it was originally applied to contracts, appears from Bracton. *Item tollitur [obligatio] morte alterius contrahentium, vel utriusque*; the obligation is also destroyed by the death of one or both of the contracting parties. *Bract. fol. 101 a.* And see *Noy's Max. ub. sup.*

#### ACTIO PCENÆ PERSECUTORIA.

In the civil law. An action prosecuted for a penalty only, and not for a specific thing. *Inst. 4. 6. 16, 18.*

#### ACTIO PCENALIS.

In the civil law. A penal action; an action brought to enforce the payment of a private penalty. *1 Mackeld. Civ. Law, 193, § 196.*

#### ACTIO PRÆJUDICIALIS.

In the civil law. A preliminary, or preparatory action. An action brought for the determination of some point or question arising in another or principal action; and so called from its being determined before (*prius*, or *præ judicari*), the principal action could proceed. *Bract. 104 a. Cowell.* Of this nature were actions for determining a man's civil state or condition, as whether he was a freeman or a slave, legitimate or illegitimate. *Inst. 4. 6. 13. Heinecc. Elem. lib. 4, tit. 6, § 1142. Halifax Anal. b. 3, c. 1, n. 14.*

#### ACTIO PRÆTORIA.

In the civil law. A prætorian action; one introduced by the prætor, as distinguished from the more ancient *actio civilis*, (q. v.) *Inst. 4. 6. 3. 1 Mackeld. Civ. Law, 189, § 194.*

#### ACTIO PROPRIA.

An action brought for the recovery of a several thing, (*res propria*), as distinguished from a thing held in common. *Bract. fol. 103 a.*

#### ACTIO PUBLICIANA.

In the civil law. An action which lay for one who had lost a thing of which he had *bona fide* obtained possession, before he had gained a property in it, in order to have it restored, under color that he had obtained a property in it by prescription. *Inst. 4. 6. 4. Hei-*

*nec. Elem. lib. 4, tit. 6, § 1131. Halifax Anal. b. 3, c. 1, n. 9.*

**ACTIO QUANTI MINORIS.** In the civil law. An action given to a purchaser who had paid more for a thing than it was intrinsically worth, to recover back so much of the price as the thing was of less value (*quanti minoris*) or fell short in value, by reason of the defect.\* *Pothier, Contract of Sale*, part 2, ch. 1, sect. 4, art. 5. 1 *Kames' Equity*, 271.

**ACTIO QUOD JUSSU.** In the civil law. An action given against a master, founded on some business done by his slave, acting under his order, (*jussu*.) *Inst. 4. 7. 1.*

**ACTIO QUOD METUS CAUSA.** In the civil law. An action granted to one who had been compelled by unlawful force, or fear (*metus causa*) that was not groundless, (*metus probabilis* or *justus*), to deliver, sell or promise a thing to another. *Bract. fol. 103 b.* 1 *Mackeld. Civ. Law*, 120, § 216.

**ACTIO or INTERDICTUM QUOD VI AUT CLAM.** In the civil law. An action which lay where one forcibly or clandestinely, (*vi aut clam*.) erected or demolished a building on his own or another's ground, and thereby unlawfully injured another; its object being to get everything restored to its former condition, and to obtain damages.\* *Dig. 43. 24. 1.* Bracton gives this action a place in his system of remedies, defining it as one which lay against him who had erected or prostrated a building on another's land, and concealed himself in order to avoid being prevented from doing it, (*et se occultavit, ne sibi prohiberetur*;) and observes that the offender might by this action be compelled to restore everything to its former state, at his own expense. *Bract. fol. 103 b. 104 a.* See *Interdictum*.

**ACTIO REALIS.** In the civil and common law. A real action. More commonly termed in the civil law *actio in rem*, (q. v.) *Inst. 4. 6. 3. Id. 4. 17. 2.* The barbarous word *realis* is of frequent occurrence in Bracton. *Actionum civilium quædam sunt reales, et quædam sunt personales*; of civil actions, some are real, and some are personal. *Bract. fol. 159 b. Si actio realis fuerit*; if the action be real. *Id. fol. 183 b.* See *Realis*.

**ACTIO REDHIBITORIA.** In the civil law. An action which lay to compel a vendor to take back, (*redhibere*.) the thing sold,

and return the price. *Dig. 21. 1. 21. Heinecc. Elem. lib. 3, tit. 24, § 913. Pothier, Contr. of Sale*, part 2, ch. 1, sect. 4, art. 4. 1 *Kames' Equity*, 270, 271.

**ACTIO REI PERSECUTORIA.** In the civil law. An action for the recovery of a specific thing, (*rei persequendæ causâ comparata*.) or damages; as distinguished from the *actio pænæ persecutoria*, and the *actio mixta. Inst. 4. 6. 16, 17.* 1 *Mackeld. Civ. Law*, 192, § 196.

**ACTIO RESCISSORIA.** In the civil law. An action for rescinding the title by prescription in certain cases; as where a person, while absent in the service of the state, had gained a prescriptive title to a thing belonging to a resident (*rem, ejus qui in civitate esset, usuceperit*;) the owner was allowed (*permittitur domino*) within a year after the return of the possessor from foreign service, to demand the thing, by rescinding the prescription; (*rescissa usucapione eam rem petere*;) that is, to demand it by alleging that the possessor had not, in fact, gained a title by prescription, and that therefore the thing was still his own. *Inst. 4. 6. 5.* This action is differently described by Heineccius, Halifax, and other writers. *Heinecc. Elem. lib. 4, tit. 6, § 1132. Halifax Anal. b. 3, c. 1, n. 10.* See *Rescissory action*.

**ACTIO SERVIANA.** In the civil law. An action which lay for the lessor of a farm, or rural estate, to recover the goods of the lessee or farmer, which were pledged or bound for the rent. *Inst. 4. 6. 7. Heinecc. Elem. lib. 4, tit. 6, § 1139. Halifax Anal. b. 3, c. 1, n. 12.*

**ACTIO SPECIALIS.** In the civil law. A special action; an action brought to enforce the delivery of one or several single things. 1 *Mackeld. Civ. Law*, 193, § 196. *Dig. 6. 1. 1.*

**ACTIO STRICTI JURIS.** In the civil law. An action of strict right. A species of action *ex contractu*, in which the *judez* was limited to the precise words of agreement between the parties, as expressed in the formula of his instructions, without any discretionary power, as in the *actio bonæ fidei* (q. v.)\* *Inst. 4. 6. 28. Heinecc. Elem. lib. 4, tit. 6, § 1182.* It was regulated by the strict rules of the civil law, and was always directed to a *certum* (a certain and specific thing,) and to the fulfilment of unilateral obligations alone. *Gaius, iii. 137.* 1 *Mackeld. Civ. Law*, 194, § 197.

**ACTIO TEMPORALIS.** In the civil law. A temporary action; an action limited to a certain *time*, within which it was to be instituted, on pain of losing it; the opposite of *actio perpetua*, (q. v.)\* *Inst.* 4. 12.

**ACTIO TRIBUTORIA.** In the civil law. An action for distribution; (Lat. *tribuere*, to distribute;) an action which lay for the creditor of a son or slave, who had traded upon his *peculium*, with the knowledge of his father or master, to obtain from the latter a distributive or proportionate share of the goods traded in, (*peculiares merces*), or their proceeds.\* *Inst.* 4. 7. 3. *Heinecc. Elem.* lib. 4, tit. 7, § 1217. *Halifax Anal.* b. 3, c. 2, n. 6.

**ACTIO, or INTERDICTUM UNDE VI.** In the civil law. An action, or interdict which lay to recover possession of an immoveable thing, as land, of which one had been deprived by force. So called from the formal words in it,—*unde tu illum vi deiecasti*, (from which you have ejected him by force.)\* *Gaius*, iv. 154. *Inst.* 4. 15. 6. *Dig.* 43. 16. It resembled the modern action of ejectment, and is adopted by Bracton in his system of actions. *Bract.* fol. 103 b.

**ACTIO UTILIS.** In the civil law. An equitable, or beneficial action.\* 1 *Kaufm. Mack. Civ. Law*, 268, note. An action which lay by, or against a principal, on the contract of his agent. *Story on Agency*, § 163. The opposite of *actio directa*, (q. v.)

An action *ex delicto*, which lay where the act of a party was not immediately, but only indirectly, or consequentially injurious to another.\* *Inst.* 4. 3. 16.

**ACTIO VI BONORUM RAPTORUM.** In the civil law. An action for goods taken by force; a species of mixed action, which lay for a party whose goods or moveables (*bona*.) had been taken from him by force, (*vi*;) to recover the things so taken, together with a penalty of triple the value. *Inst.* 4. 2. *Id.* 4. 6. 19. Bracton describes it as lying *de rebus mobilibus vi ablatis sive robbatis*; (for moveable things taken away by force, or robbed.) *Bract.* fol. 103 b.

**ACTIO VULGARIS.** In the civil law. A common action; another name for the *actio directa*. 1 *Mackeld. Civ. Law*, 189, § 194. *Bract.* fol. 103 a.

**ACTION.** [Lat. *actio*, *lis*; L. Lat. *placitum*, *loquela*, qq. v.] The formal means or method of pursuing and recovering one's right in a court of justice. A formal pro-

ceeding (or series of proceedings,) in a court of justice, between parties plaintiff and defendant, by which the recovery of some alleged right is claimed by the one, and may be resisted by the other; and by which, also, such claim is enforced, or denied by the court.

An action obviously partakes of the double character of a *remedial instrument* of justice, as it is described by Blackstone, (that is, an authorized instrument, or means by which a general remedy given by law is applied to, and enforced in a particular case;) and an established *formula of litigation*, as it is considered by Cicero, and the civil law writers. 3 *Bl. Com.* 3, 116, 117. *Actiones compositæ sunt, quibus inter se homines disceptarent*; actions are framed [as the means] by which men may litigate with one another. *Dig.* 1. 2. 2. 6. *Sunt jura, sunt formulæ, —ad quas privata lis accomodatur*; there are rules and forms—by which private litigation is regulated. *Cic. pro Q. Roscio*, § 8.

An action is, in another essential point of view, a proceeding in *judicio*, (in the ancient sense of that phrase,) that is, before a *court*, and between *parties*. It is a proceeding by which each party, (or the plaintiff only, as the case may be,) seeks to obtain a *judicium*, (in the modern sense;) a judgment or determination of the court in his favor, on the case as he exhibits it, and by which also the court grants and enforces such judgment. It is not simply (though it is primarily,) a proceeding for the recovery of a right, but it is equally, after its institution, a proceeding for, and an instrument of defeating an unfounded demand. It consists of a series of acts done by the parties and the court, embracing what Bracton terms *judicium*, and which he describes as *trinus actus trium personarum*; *judicis, viz. actoris et rei*; the threefold act of three persons, to wit, the judge, the plaintiff and the defendant. *Bract.* fol. 106 a. This important feature of an action seems to have been overlooked in the ordinary definitions, most of which represent it as an unilateral proceeding merely.

Again, an action is essentially a complex or *composite* proceeding, consisting of a variety of parts put together in a certain order, or a series of proceedings commenced and conducted in a certain course, and in accordance with certain prescribed rules and forms. This will be more fully explained *infra*. The expression of the civil law,—*actiones compositæ sunt*, (actions are framed, or fitted together,) is peculiarly applicable to the modern action.

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The oldest definition of the term *action*

(*actio*) is that of the civil law,—*jus persequendi in judicio quod sibi debetur*; (the right of pursuing judicially, or in a court of justice, that which is due to one;) which has been adopted by Bracton, quoted with approval by Coke and Blackstone, and referred to as authority by later writers. *Inst.* 4. 6. pr. *Bract.* fol. 98 b. 2 *Inst.* 40. 3 *Bl. Com.* 116. The peculiar feature of this definition consists in its describing an action as a right, (*jus*), which the Roman *actio* seems to have strictly been. See *Actio*. That the Roman idea on this subject was fully transferred to the ancient English action appears not only from Bracton's unqualified adoption of the definition, but from the express words of Lord Coke, who, in distinguishing between an *action* and a *writ*, (the original writ of the old practice,) observes that "an action is the right of a suit, and the writ is grounded thereupon, and is the means to bring the demandor or plaintiff to his right." 2 *Inst.* 40. In its modern sense and use, however, the term *action* very clearly implies, not only a right, but the actual exercise of a right; the prosecution of means for the recovery of a right. *Ersk. Inst.* b. 4, tit. 1. Hence, even the civilian Heineccius, while adopting Justinian's definition of an action as a right, subjoins the following definition of an action as a remedy—*medium legitimum persequendi in judicio jura*, (the lawful means of pursuing rights in a court.) *Elem. Jur. Civ.* lib. 4, tit. 6, § 112 b. A double definition of a similar kind is adopted by some of the Scotch writers. *Forbes' Inst.* part 4, b. 1, ch. 2, tit. 1.

The next oldest definition of the term *action* is that of the English common law, first given by the Mirror, and adopted by Lord Coke: *Action n'est autre chose que loiall demande de son droit*; an action is nothing else than the lawful demand of one's right. *Mirr.* c. 2, § 1. *Co. Litt.* 285 a. 2 *Inst.* 40. This presents an action in more of its modern character,—a right actually exercised, an act, or proceeding,—but still only as a unilateral proceeding,—the act of the plaintiff,—no reference being made to any opposing party, or his act in opposition, while all reference to a tribunal, (except what may be inferred from the word *lawful*,) is excluded. The more expanded definition of Erskine, "a demand regularly made, and insisted on before the proper judge, for the attaining or recovering of a right," while it admits the important idea of a court, seems otherwise liable to the same objection. *Ersk. Inst.* b. 4, tit. 1. A modern action is not only something more than a mere right, but also something more than the

mere demand of a right; embracing clearly the ideas, not only of a demand which must be made in proper form, but of a demand which may be resisted by an opposing party, and which must be acted upon by the court to which it is presented. It includes, in other words, not only the act of the plaintiff in making a lawful demand, but the act of the defendant, in opposition, and the act of the court in passing judgment between the parties: so well embodied in the expression of Bracton,—*trinus actus trium personarum*,—already noticed.

For the reasons here given, the compiler has been induced to substitute, in the place of these celebrated definitions of the ancient law, others, supposed to be more fully expressive of the nature of an action in its modern acceptance. In further illustration of the definitions substituted, the following remarks are submitted:

The nature of an action, as a complex or composite proceeding, has been already adverted to. The proceedings of which it is made up may, indeed, be reduced under two general heads, viz. the presentation of a case to a court for its decision, and the decision of the court thereon; which are the two successive objects an action always contemplates. In order, however, to accomplish the first of these, the parties must properly appear in court, and the case itself must be presented in proper form; and to attain the last effectually, the case presented must be made out by proof or argument, and the judgment of the court when obtained, must be carried into execution. Hence an action, where it takes its regular course, always consists of the following successive proceedings: *process*, by which the party complained of is brought before the court; *pleadings*, by which the nature of the demand and the defence is exhibited to the court by the respective parties; *trial* or *hearing* by the court of the case so presented; *judgment* or *decree*, by which the court awards or denies the remedy sought by the action; and *execution*, by which the judgment is actually and specifically enforced. See *Process*, *Pleading*, *Trial*, *Hearing*, *Judgment*, *Execution*. These proceedings, again, are each composed of a variety of acts, having each its proper rule and form; besides which there are numerous others, of an incidental or occasional kind, growing out of the various circumstances attending the action, and by which its progress is modified, more or less interrupted, and sometimes prematurely terminated. See *Practice*.

An action, as we have seen, is a proceeding between parties. Of these, the plaintiff, or complainant is ordinarily considered as

the *actor*, the *acting* party in an emphatic sense, (sometimes called in the old law *pars actrix*,) who sets the law in motion, (*qui lege agit*,) and pursues (*persequitur*) his remedy through the court; hence expressively termed in Scotch law, the *pursuer*. The defendant, or accused party (*reus*) opposes and resists him, *denying* (in the ancient sense of the term *defend*,) either the right of action generally, or the propriety of the particular action employed; and *defending himself*, (in the modern sense,) by such proceedings as the case from time to time admits or requires. See *Actor*, *Defendant*, *Plaintiff*, *Reus*.

The terms *action* and *suit* are now nearly, if not entirely synonymous. 3 *Bl. Com.* 3, 116, *et passim*. Marshall, C. J., 6 *Wheaton's R.* 264. Or, if there be a distinction, it is that the term *action* is generally confined to proceedings in a court of law, while *suit* is equally applied to prosecutions at law or in equity. Formerly, however, there was a more substantial distinction between them. An *action* was considered as terminating with the giving of judgment, and the execution formed no part of it. *Litt.* sect. 504. *Co. Litt.* 289 a. A *suit*, on the other hand, included the execution. *Id.* 291 a. So, an action is termed by Lord Coke, "the right of a *suit*." 2 *Inst.* 40. See *Suit*.

It is further to be observed that there are many judicial proceedings, conducted nearly in the same form as actions, before the same tribunals, and with the same general objects, viz., the enforcement of some legal right or remedy, which nevertheless are not technically considered as *actions*, nor so denominated. Of this description are the proceedings at law by *writ of error*, *scire facias*, *mandamus*, *certiorari*, *habeas corpus*, and the like. Originally, indeed, the terms *writ* and *action* were nearly synonymous. *Steph. Pl.* 8. *Gilb. C. Pleas*, 4. And Lord Coke has laid down the rule, that every writ to which the defendant may plead, be it original, or judicial, is in law an action. *Co. Litt.* 291 a. Practically, however, the term *action* is now exclusively appropriated to those forms of judicial remedy which are ranked under the threefold division of *real*, *personal* and *mixt* actions, (qq. v.)

**ACTION ON THE CASE.** [L. Lat. *actio super casum*.] In practice. A species of personal action of very extensive application, otherwise called *trespass on the case*, or simply *case*, from the circumstance of the plaintiff's whole case or cause of complaint being set forth at length in the original writ by which formerly it was always

commenced. 3 *Bl. Com.* 122. See *Case*, *Trespass on the case*.

**ACTION OF ABSTRACTED MULTURES.** In Scotch law. An action to recover *multures*, that is, tolls due by tenure to a particular mill for grinding grain, and which have been *abstracted*, that is, withdrawn, or withheld by the tenants.\* *Forbes' Inst.* part 2, b. 2, ch. 4, tit. 3, § 1. See *Multure*.

**ACTION OF A WRIT.** A phrase used in the old books, where a defendant pleaded some matter tending to show that the plaintiff had no cause to have the writ he brought, although it might be that he might have another writ or action for the same matter. Such a plea was called a *plea to the action of the writ*. If, however, it appeared from the plea that the plaintiff had no cause to have any action for the thing demanded, then it was called a *plea to the action*. *Termes de la ley*. Cowell.

**ACTION PREJUDICIAL.** See *Actio præjudicialis*.

**ACTIONABLE.** That which can legally be made the ground or subject of an action; that for which an action will lie.\* Chiefly applied to slanderous words uttered or published of another. 3 *Chitty's Bl. Com.* 123, 125, and notes.

**ACTIONARE.** L. Lat. [from *actio*, an action.] To bring an action; to prosecute, or sue. *Thorn's Chron.* *Whishaw*.

**ACTIONARIUS, Accionarius.** L. Lat. [from *actio*, an office.] An officer. *Spelman*.

**ACTIONES LEGIS.** Lat. In the Roman law. Legal or lawful actions; actions of, or at law; (*legitimæ actiones*,) *Dig.* 1. 2. 2. 6. So called, according to Gaius, either because they were expressly given by the laws (*quod legibus proditæ erant*,) or because they were adapted to, or expressed in the words of the laws, (*quia ipsarum legum verbis accommodatæ erant*;) being on that account regarded as immutable as the laws themselves, (*immutabiles proinde atque leges observabantur*,) *Gaius*, iv. § 11. These constituted the most ancient system of judicial remedy among the Romans, and were subject to very strict rules; the slightest error or deviation from the prescribed form being fatal to the action, (*ut qui vel minimum errasset litem perderet*,) *Id.* § 30. They were abolished by the *Lex Æbutia*, and the two *Leges Julia*, and the

proceeding by *formula* (*per concepta verba*) substituted in their place. *Id. ibid.* See *Actio*.

**ACTON BURNEL.** A name given to the statute *De mercatoribus*, 13 Edw. I., ordaining the statute merchant for the recovery of debts; which was so called from the castle of Acton Burnel, in Shropshire, where it was made. *Reg. Orig.* 148 a. *Termes de la ley. Cowell.* According to Mr. Reeves, it was made in the 11th year of Edward I. 2 *Reeves' Hist. Eng. Law*, 158—162.

**ACTOR.** Lat. [from *agere*, to act, to do, to move.] In the civil and common law. The party who institutes or prosecutes an action, (*qui lege agit*;) a plaintiff. *Inst.* 4. 6. 30, 34, 38. *Id.* 4. 15. 7. *Bract.* fol. 106 a, 376 a. 2 *Bl. Com.* 25. Sometimes termed *agens*, and *pars actrix*. *Inst.* 4. 6. 33. *Reg. Orig.* 9 a. In some cases, both parties are regarded as *actors*; (*uterque actor est*;) and such actions are termed in the civil law, *judicia duplicia*, and *mixtæ actiones*; double or mixt actions. *Dig.* 44. 7. 37. 1. 1 *Mac-keld. Civ. Law*, 188, § 193. Of this description is the modern action of replevin. But the term *actor*, even in these cases, properly belongs to the party commencing the proceedings, (*ille actor qui primo provocaverit ad judicium.*) *Bract.* fol. 102 b. 372 a.

In the civil law. A proctor, advocate, or pleader; one who represents a party, and manages his cause, (*qui causam agit*.) *Actor dominicus*; the lord's, or king's advocate, or attorney. *Spelman. Cowell. Actor ecclesiæ*; the advocate, or pleading patron of a church. *Id.*

In the civil law. A temporary guardian or tutor. *Inst.* 1. 23. 6.

An attorney, bailiff or steward; one who manages or acts for another; *Scotticè*, a doer, which is the literal translation. *Actor dominicus*; a lord's bailiff. *Cowell. Actor villæ*; the steward or head bailiff of a town or village. *Spelman. Cowell.*

**Actor sequitur forum rei.** The plaintiff follows the forum of the thing [in controversy.] He must sue in the court where the property is; that is, in the court of the place, or country, where the thing (*res*) in controversy is situate, (*sita est*;) or, as it is technically expressed, in the *forum rei sitæ*, (q. v.) 2 *Kent's Com.* 462, 463. *Story's Conf. of Laws*, § 325 k. Every question concerning a subject [*res*] moveable or immoveable, must be determined by the judge whose legal powers extend over that subject. 2 *Kames' Equity*, 343.

**Actor sequitur forum rei.** The plaintiff follows the court of the defendant, (*reus*;) that is, he must sue in the court of the place where the defendant resides. This was a maxim in the time of Bracton. *Verum est quod sive laicum sive clericum velit quis convenire, debet adire judicem et sequi forum rei, et judicem habebit illum apud quem reus habet domicilium, sive domicilium habuerit sub jurisdictione unius vel duorum.* It is true that whether one desires to sue a layman, or a clerk, he must apply to the judge, and follow the court of the defendant, and must have him as his judge with whom the defendant has his domicile, whether he has his domicile under the jurisdiction of one, or two. *Bract.* fol. 401 a. But this maxim was not of universal application. *Id. ibid.*

The apparently exact verbal similarity between this and the preceding maxim will not escape notice; the difference consisting in the circumstance that the word *rei* in the one, is the genitive of *res*, (a thing,) and in the other, of *reus*, (a defendant.)

**Actori incumbit probatio.** The burden of proof lies on the plaintiff. *Hob.* 103 a.

**ACTRIX.** L. Lat. A female *actor*, or plaintiff; as the demandant in an action of dower. *Bract.* fol. 307 b.

**ACTS OF SEDERUNT.** In Scotch law. Ordinances made by the court of session, for regulating the forms of proceeding to be observed in all actions or matters which may be brought before them. *Ersk. Inst.* b. 1, tit. 1, § 40. So called from the word *sederunt*, [they sat,] with which anciently they used to begin; or because they are made by the lords *sitting* in judgment. *Forbes' Inst. prel. diss. ch. 3, tit. 10.*

**ACTUAL COST.** The actual price paid for goods by a party, in the case of a real *bona fide* purchase, and not the market value of the goods. *Story, J., 2 Story's R.* 421, 429. 2 *Mason's R.* 48. So defined in construction of the 66th section of the U. S. Revenue Act of 1799, ch. 128. See 2 *Mason*, 393.

**ACTUARIUS.** Lat. [from *acta*, q. v.] In the Roman law: An officer who took down in short hand, (like a modern reporter,) what was said or done, (*acta*;) before the public magistrates; an actuary. *Suet. J. Cæs.* 55. See *Actuary*.

**ACTUARY.** [Lat. *actuarius*.] A secretary, clerk, or register of any public body, or association; particularly of an ecclesiastical body, or court. *Cowell. Blount.*

The manager of a joint stock company, under a board of directors, particularly of an insurance company; combining with the duties of a secretary, those of a scientific adviser to the board which gives him his office, in all matters involving calculation; a person skilled in the doctrine of life annuities and insurances, and who is in the habit of giving opinions upon cases of annuities, reversions, &c. *Stat. 59 Geo. III. c. 128. P. Cyclopaedia.*

**ACTUM**, pl. *Acta*. Lat. [from *agere*, to do.] Done; a thing done; an act, or deed. *Quodcumque scriptum sit quasi actum, videatur etiam actum*; whatever is written as done, (alleged in writing to be done,) shall be supposed to be actually done. *Inst. 3. 21. 8.* A distinction is made in the civil law between *actum*, and *gestum*; the latter term being restricted to signify a thing done without words (*rem sine verbis factam*.) *Dig. 50. 16. 19.* *Actum* is less used in the singular, as a substantive, than *actus*, (q. v.) but the plural *acta* (q. v.) is of frequent occurrence.

**ACTUS**, pl. *Actus*. Lat. [from *agere*, to do.] An act; a deed. *Publici actus*; public acts, or proceedings. *Bract. fol. 336.* *Actus curiae*; an act of a court, or of the court. *Actus Dei*; an act, or the act of God. *Actus legis*; an act, or the act of the law. See *infra*.

**Actus me invito factus non est meus actus.** An act done by me, against my will, is not my act. *Branch's Princ.* The concurrence of a person's will (*voluntas*) in an act, is essential to charge him with the act, or its consequences. *Tolle voluntatem, et erit omnis actus indifferens*; take away will, and every act becomes indifferent. *Bract. fol. 101 b.*

**Actus non facit reum, nisi mens sit rea.** An act does not make [the doer of it] guilty, unless the mind be guilty; that is, unless the intention be criminal. *3 Inst. 107.* The intent and the act must both concur to constitute the crime. Lord Kenyon, C. J. *7 T. R. 514. Broom's Max. 144.* This maxim is exclusively applicable to criminal law, and to civil proceedings for slander and libel; in civil actions, the intent is immaterial, if the act done be injurious to another. *Id. 155, 161.* The maxim, *Affectio tua nomen imponit operi tuo*, (q. v.) embodies the same principle. *Bract. fol. 101 b.*

**Actus curiae neminem gravabit.** An act of the court shall prejudice no man. *Jenk. Cent. 118.* Where a delay in an action is the act of the court, neither party shall suf-

fer for it. Thus, if one party die during a *curia advisari vult*, (q. v.) judgment may be entered *nunc pro tunc*, (q. v.) for the delay is the act of the court. *1 Stra. 425. Broom's Max. 52.*

**Actus Dei nemini facit injuriam.** The act of God does injury to no one. *2 Bl. Com. 122. 5 Co. 87.* A thing which is inevitable by the act of God, which no industry can avoid, nor policy prevent, will not be construed to the prejudice of any person in whom there was no laches. *Broom's Max. 108.* Thus, if a tenant for his own life sows the lands, and dies before harvest, his executors shall have the emblements, or profits of the crop, for the estate was determined by the act of God. *2 Bl. Com. 122.*

**Actus Dei nemini est damnosus.** The act of God is hurtful to no one. *2 Inst. 287.* Another form of the last maxim.

**Actus legis nemini facit injuriam.** The act of the law does injury to no one. *5 Co. 116.* Thus, if a lease be made to husband and wife during coverture, (which gives them a determinable estate for life,) and the husband sows the land, and afterwards they are divorced *a vinculo matrimonii*, the husband shall have the emblements in this case, for the sentence of divorce is the act of law. *2 Bl. Com. 123.*

**Actus legis nemini est damnosus.** The act of the law is hurtful to no one. A different form of the last maxim.

**Actus inceptus, cujus perfectio pendet ex voluntate partium, revocari potest; si autem pendet ex voluntate tertie personae, vel ex contingenti, revocari non potest.** An act already begun, the completion of which depends on the will of the parties, may be revoked; but if it depend on the will of a third person, or on a contingency, it cannot be revoked. *Bacon's Max. 79, reg. 20.*

**Actus legitimi non recipiunt modum.** Acts required to be done by law do not admit of qualification. *Hob. 153. Branch's Princ.*

**ACTUS.** L. Lat. [from *agere*, to do.] An act of Parliament; a statute. *8 Co. 40. [20.] 4 Reeves' Hist. E. L. 111.*

**ACTUS.** Lat. [from *agere*, to drive.] In the civil law. A species of right of way, consisting in the right of driving cattle, or a carriage, (*jus agendi jumentum vel vehiculum*,) over the land subject to the servitude. *Inst. 2. 8. pr.* It is sometimes translated a road, and included the kind of way termed *iter*, or path. *Id. ibid. 1 Mackeld. Civ. Law, 343, § 313. Bract. fol. 7 b. 232 a.* See *Iter*.



Lord Coke, who adopts the term from Bracton, defines *actus* a foot and horse way, vulgarly called pack and prime way; but distinguishes it from a cart way. *Co. Litt.* 56 a.

AD. Lat. To. *Ad damnum*, (q. v.); to the damage.

For. *Ad litem*; for the suit. 2 *Steph. Com.* 333. *Ad vitam*; for life. *Bract.* fol. 41 a.

At. *Ad largum*; at large. *Plowd.* 37.

Until. *Ad culpam*; until misbehavior. See *Ad vitam aut culpam*.

AD. L. Fr. [from *aver*, to have.] Has. *Come ceo que il ad de son done*; as that which he has of his gift. See *Fine*.

AD ADMITTENDUM CLERICUM, (or *De clerico admittendo*; for admitting a clerk.) L. Lat. In English law. A writ, in the nature of an execution, in the action of *quare impedit*, founded on the judgment, (that the plaintiff recover his presentation,) and commanding the bishop to whom it is directed, to admit his clerk.\* 3 *Bl. Com.* 250. 3 *Steph. Com.* 665. *Bract.* fol. 248 a.

AD ALIUD EXAMEN. L. Lat. To another tribunal. 2 *Inst.* 602. 5 *Mason's R.* 43. "It belongs *ad aliud examen*," is an expression frequently used in the opinions of courts, where cognizance or jurisdiction of any matter or question is disclaimed. 3 *Story's R.* 827. 11 *Peters' U. S. R.* 182. *Alium* is sometimes inaccurately used for *aliud*. *Id. ibid.*

AD ASSISAS CAPIENDAS. L. Lat. To take assises; to take or hold the assises. *Bract.* fol. 110 a. 3 *Bl. Com.* 185. *Ad assisam capiendam*; to take an assise. *Bract.* fol. 110 b.

AD AUDIENDUM ET TERMINANDUM. L. Lat. To hear and determine. *Stat. Westm.* 2, c. 29, 30. 2 *Reeves' Hist. E. L.* 169, 170. See *Oyer and Terminer*.

AD COLLIGENDUM BONA DEFUNCTI. L. Lat. To collect the goods of the deceased. Special letters of administration granted to one or more persons, authorizing them to collect and preserve the goods of the deceased, are so called. 2 *Bl. Com.* 505. 2 *Steph. Com.* 241. These are otherwise termed letters *ad colligendum*, and the party to whom they are granted, a collector. 2 *N. Y. Rev. St.* [76,] 19, §§ 38, 39.

AD COMMUNEM LEGEM. L. Lat. At the common law. The name of a species of writ of entry, now obsolete. Formerly, when tenant for life, in dower, or by the curtesy, aliened in fee, tail, or for life, the land which they held, the reversioner in fee, tail, or for life, might, after their death, have a writ of entry *ad communem legem*, to recover possession. *F. N. B.* 207 G. 1 *Roscoe on Real Actions*, 93, 94. 3 *Bl. Com.* 183, note (z). 3 *Reeves' Hist. E. L.* 39.

AD COMPARENDUM. L. Lat. To appear. *Reg. Orig.* 60 a. *Ad comparendum, et ad standum juri*; to appear and to stand to the law, or abide the judgment of the court. *Cro. Jac.* 67.

AD COMPOTUM REDDENDUM. L. Lat. To render an account. *Stat. Westm.* 2, c. 11.

AD CONSULENDUM. Lat. To consult; for the purpose of consultation. *Bract.* fol. 5 b. 1 *Bl. Com.* 227.

AD CURIAM. L. Lat. At a court. 1 *Salk.* 195.

AD CUSTAGIA. L. Lat. At the costs. *Reg. Jud.* 9 a. *Ad ejus propria custagia*; at his own proper costs. *Towns. Pl.* 18. See *Custagia*.

AD CUSTUM. L. Lat. At the cost. *Ad custum ejus*; at his cost. *Bract.* fol. 234 a. *Ad custum suum, vel custum tuum*; at his cost, or yours. *Id.* fol. 328. *Adustus*; at the costs. *Reg. Orig.* 279 b.

AD DAMNUM, *Ad dampnum*. L. Lat. To the damage. In pleading. The emphatic words of the clause at the end of the declaration, when in Latin, in which a certain amount of damages was claimed. *Ad damnum ipsius A. —, et inde, &c.* *Towns. Pl.* 418. This is literally translated in the modern forms, "to the damage of the said A. of —, and therefore, &c.;" and hence the clause itself is technically termed the *ad damnum*. 1 *Chitt. Pl.* 419. See *Damnum*. A similar clause in libels in admiralty is so termed. *Story J.*, 3 *Mason's R.* 503, 504.

AD DEFENDENDUM. Lat. To defend. 1 *Bl. Com.* 227.

AD DIEM. Lat. At a day; at the day. *Towns. Pl.* 23. *Ad certum diem*; at a certain day. 2 *Stra.* 747. *Solvit ad*

*diem*; he paid at, or on the day. 1 *Chitt. Pl.* 485.

**AD ea quæ frequentius accidunt jura adaptantur.** Laws are adapted to those cases which most frequently occur. 2 *Inst.* 137. 5 *Co.* 128. 6 *Id.* 77. *Wingate's Max.* 718. *Broom's Max.* 138, note.

**AD EFFECTUM.** L. Lat. To the effect, or end. *Co Litt.* 204 a. 2 *Crabb's Real Prop.* 802, § 2143. *Ad effectum sequentem*; to the effect following. 2 *Salk.* 417.

**AD EXCAMBIUM.** L. Lat. For recompense; to make recompense. *Bract.* fol. 12 b. 37 b. *Ad escambium.* *Id.* fol. 27 a. See *Excambium*.

**AD EXHÆREDATIONEM.** L. Lat. To the disherison, or disinheriting; to the injury of the inheritance. *Bract.* fol. 15 a. 3 *Bl. Com.* 228. Formal words in the old writs of waste.

**AD EXHIBENDUM.** See *Actio ad exhibendum*.

**AD EXITUM.** L. Lat. At issue; at the end (of the pleadings.) *Steph. Pl.* 24. See *Exitus, Issue*.

**AD FACIENDUM.** Lat. To do. *Co Litt.* 204 a. 2 *Crabb's Real Prop.* 803, § 2145. *Ad faciendum, subjiciendum et recipiendum*; to do, submit to, and receive. See *Habeas Corpus*.

**AD FIDEM.** Lat. Under allegiance; owing allegiance; bound to allegiance, or fealty. *Quia est ad fidem regis Franciæ, et nihil capere poterit antequam fiat fides regi Angliæ*; because he owes allegiance to the king of France, and can take nothing before allegiance (or fealty,) be sworn to the king of England. *Bract.* fol. 428 b. See *Fides*.

*Ad fidem utriusque regis*; owing allegiance to each king; the subject of both kings. *Sunt aliqui Francigenæ in Francia qui sunt ad fidem utriusque*; there are some Frenchmen in France who owe allegiance to both [kings.] *Bract.* fol. 427 b. This phrase is adopted by Lord Coke, and is freely used in modern law, in the discussion of questions of allegiance, and citizenship. 7 *Co.* 1, 27, 54. 2 *Kent's Com.* 56.

**AD FILUM AQUÆ.** L. Lat. To the thread of the water; to the central line, or middle of the stream. *Usque ad filum aquæ*; as far as the thread of the stream.

*Bract.* fol. 208 b. 235 a. A phrase of frequent occurrence in modern law; of which *ad medium filum aquæ* (q. v.) is another form. See *Filum, Filum aquæ*.

**AD FIRMAM.** L. Lat. To farm. *Ad firmam dimittere*; to let to farm; to farm let. *Bract.* fol. 12 b. See *Farm, Firma*. For a farm, or term. See *Id.* At a farm, or rent. See *Id.*

**AD GAOLAS DELIBERANDAS.** L. Lat. To deliver the gaols. *Bract.* fol. 109 b. *Reg. Jud.* 30. *Ad gaolam deliberandam*; to deliver the gaol; to make gaol delivery. *Bract.* fol. 110 b.

**AD HOC.** Lat. To this; hereunto. *Towns. Pl.* 22. *Ad hoc facit*; it makes to, or for this; it favors this doctrine; it goes to establish this point, or principle. *Bract.* fol. 53 b. A common expression in Bracton.

**AD IDEM.** Lat. To the same point. *Ad idem facit*; it makes to, or goes to establish the same point. *Bract.* fol. 27 b. 29 a. A very common expression in Bracton, in referring to adjudged cases. *Ad idem* is used also in the old reports, and not unfrequently in the modern books. *T. Raym.* 175. 1 *Sumner's R.* 310, 463.

**AD ILLUD.** Lat. To that; thereto, or thereunto. *Towns. Pl.* 22.

**AD INDE.** L. Lat. Thereunto. *Ad inde requisitus*; thereunto required. *Towns. Pl.* 22.

**AD INQUIRENDUM.** Lat. To inquire. *Breve ad inquirendum*; a writ to inquire; a writ of inquiry. A judicial writ, commanding inquiry to be made of any thing relating to a cause pending in court. *Cowell*.

**AD ITINERANDUM.** L. Lat. To itinerate. *Justitiarum ad itinerandum de comitatu in comitatum*; justices to itinerate from county to county. *Bract.* fol. 108 b. See *Iter, Justitarius*.

**AD JUNGENDUM AUXILIUM.** L. Lat. To join aid; to join in aid. 1 *Roscoe Real Act.* 280. See *Auxilium, Summeas ad auxiliandum*.

**AD JURA REGIS, or REGIA.** L. Lat. For [preserving] the rights of the crown. The name of a writ, in English practice, brought by the king's clerk when

presented to a living, against him who sought to eject him, to the prejudice of the king's title. *Reg. Orig.* 61—65. 4 *Co. pref.* *Cowell.*

**AD LARGUM.** L. Lat. At large; at liberty; free, or unconfined. *Ire ad largum*; to go at large. *Plowd.* 37.

At large; giving details, or particulars; *in extenso*. A special verdict was formerly called a verdict at large. *Plowd.* 92.

**AD LITEM.** L. Lat. For a, or the suit; with reference to a suit; for the purpose of prosecuting or defending a suit. 2 *Steph. Com.* 333. A term commonly applied to guardians.

**AD LUCRANDUM VEL PERDENDUM.** L. Lat. To gain or lose. Emphatic words in the old warrants of attorney. *Reg. Orig.* 21, *et seq.* Sometimes expressed in English, "to lose and gain." *Plowd.* 201.

**AD MAJUS.** L. Lat. At the most. *Towns. Pl.* 17.

**AD MEDIUM FILUM AQUÆ.** L. Lat. To the middle thread, or line of the water; to the centre of the stream. An expression frequently used in describing the extent of the rights of the proprietors of land bounded on a river, or stream. 3 *Kent's Com.* 428, 429, and notes. 2 *Smith's Lead. Cas.* 98, [147, 148, Am. ed.] *Ad filum medium aquæ, ad filum aquæ, usque filum aquæ*, are different forms of this phrase. See *Filum aquæ*.

**AD MEDIUM FILUM VIÆ.** L. Lat. To the middle line, or thread of the way; to the centre of the road. A phrase used in describing the extent of the right of ownership of lands bounded on a street or highway. 2 *Smith's Lead. Cas.* 98, [144, 145, Am. ed.] See *Filum viæ*.

**AD MINUS.** L. Lat. At the least. *Ut ad minus teneatur ad interesse*; that he may at least be held to the extent of his interest. *Bract.* fol. 18 b.

**AD MORDENDUM ASSUETUS.** L. Lat. Accustomed to bite. *Cro. Car.* 254. A material averment in declarations for damage done by a dog to persons, or animals. 1 *Chitt. Pl.* 388. 2 *Id.* 597.

**AD NOCUMENTUM.** L. Lat. To the nuisance, or annoyance. *Ad nocumentum liberi tenementi sui*; to the nuisance of his

freehold. Formal words in the old assise of nuisance. 3 *Bl. Com.* 221.

**AD OSTIUM ECCLESIAE.** L. Lat. [L. Fr. *al huis d'église*.] At the door of the church. *Bract.* fol. 92 a. 2 *Bl. Com.* 132, 133. See *Dower ad ostium ecclesia*.

**Ad proximum antecedens fiat relatio, (nisi impediatur sententia.)** Relation should be had, or made to the next antecedent, unless the sense forbid. *Jenk. Cent.* 180. *Noy's Max.* 4. Words in construction must be referred to the next antecedent, where the matter itself doth not hinder it. *Wingate's Max.* 15, max. 10. Thus, where a devise was to H., and the heirs of his body, remainder to T. C. of W. and the heirs male of his body, upon condition that *he or they*, or any of them, should not alien, &c., the words *he or they* were held to refer not to H., but to T. C. of W., &c. 5 *Co.* 68 a. But where an award was that one party should pay before such a feast ten pounds to the other, and that *then* the other should make him a release, it was held that the word *then* should not be referred to the feast, but to the time of payment of the money. *Dyer*, 15 b, arg. See *Broom's Max.* 292—294.

The meaning of this maxim has been singularly mistaken in most of the translations of it. Thus, in Branch,—“Let the antecedent relate to that which follows next to it, unless a sentence intervene.” In Noy,—“The antecedent bears relation to what follows next, unless it destroys the meaning of the sentence.” In Wharton,—“Let the antecedent relation be connected with that which follows, unless it is intervened by a sentence.” It is hardly necessary to add that the last of these reduces the maxim to an absurdity. The use of *impediatur* for *impediat*, in some of the books, has tended in a considerable degree to obscure the sense.

**Ad questionem facti non respondent iudices: ad questionem legis non respondent juratores.** Judges do not answer to a question of fact: jurors do not answer to a question of law. *Co. Litt.* 295 b. 8 *Co.* 308, [155.] Or, as the converse is sometimes affirmatively stated: **Ad questionem juris respondent iudices; ad questionem facti respondent juratores.** Judges answer to a question of law; jurors, to a question of fact. A maxim embodying the great leading principle of pleading, that a question or issue of *law* must be answered, that is, determined by the court; and a question or issue of *fact* must be answered, that is, tried by a jury. *Broom's Max.* 43. Used, also, as expressive of the general rule of proceeding on trials

before a jury, viz : that it is the office of the judge to instruct the jury in points of law, and of the jury to decide on matters of fact. *Co. Litt.* 295 b. See *Broom's Max.* 43—48.

**AD QUOD DAMNUM.** L. Lat. (To what damage.) In English law. A writ (so called from these its emphatic words,) directed to the sheriff, commanding him to inquire by the oath of jurors, whether a grant intended to be made by the king would be to his damage, or prejudice, or to that of others; and if it be, then to *what damage*, (ad quod damnum et quod præjudicium nostrum, et ad quod damnum et quod præjudicium aliorum.) *Reg. Orig.* 247 a, et seq. *F. N. B.* 221. It is required to be issued before the crown can grant certain liberties, as a fair, market, &c., which may be prejudicial to others, and it was also formerly had for the turning and changing of ancient highways, watercourses, &c. *Termes de la ley.* *Whishaw.*

A writ under this name is given by the Revised Statutes of New-York, in cases where the governor of the State is authorized by law to take possession of any lands or tenements within the state for the use of the people, and he cannot agree with the owners of such lands for the purchase thereof. 2 *Rev. St.* [588,] 488, § 66.

**AD QUOD NON FUIT RESPONSUM.** L. Lat. To which there was no answer. A phrase used in the reports, where a point advanced in argument by one party was not denied by the other; or where a point or argument of counsel was not met or noticed by the court; or where an objection was met by the court, and not replied to by the counsel who raised it. 3 *Co.* 9. 4 *Id.* 40.

**AD RECTUM.** L. Lat. To right; to do right; to meet an accusation; to answer the demands of the law.\* *Habeant eos ad rectum*; they shall have them to answer the law, or to make satisfaction. *Bract.* fol. 124 b.

**AD RESPONDENDUM.** L. Lat. To answer. Emphatic words in the old writs of *capias*, and other writs. *Reg. Orig.* 273. See *Capias ad respondendum.*

**AD SECTAM.** L. Lat. At the suit, at the suit of. *Reg. Orig.* 273 a. *Bract.* fol. 131 b. *Ad nullius sectam*; at the suit of no one. *Id.* fol. 133 a. This term, (abbreviated to *adsm.*, and *ads.*) is still retained in practice, in entitling papers. See *Ads.*

**AD STANDUM RECTO.** L. Lat. To stand to the right; to meet an accusation or complaint; to stand a trial; to abide by the sentence of the law.\* *Responsurus, et ad standum recto, si sit aliquis qui versus eum loquatur*; to answer, and to stand to the charge, if there be any one who shall complain against him. *Bract.* fol. 125 a. *Plegium ad standum recto*; security to appear and answer to an accusation. *Id.* fol. 154 a. *Plegios de stando ad rectum.* *Id.* fol. 336 a. See *Reg. Orig.* 270. The phrase *stare juri*, (q. v.) has the same meaning. *Reg. Orig.* 270 b.

**AD STUDENDUM ET ORANDUM.** L. Lat. For studying and praying; for the promotion of learning and religion. A phrase applied to colleges and universities. 1 *Bl. Com.* 487. *T. Raym.* 101.

**AD TERMINUM.** L. Lat. For a term. *Ad terminum vitæ vel annorum*; for a term of life or years. *Bract.* fol. 26 b. *Ad terminum, vel ad tempus*; for a term, or for a time. *Id. ibid.*

**AD TERMINUM QUI PRÆTERIIT.** L. Lat. For a term which has passed. The name of a writ of entry which lay at common law for the lessor or his heirs, where a lease had been made of lands or tenements for life or years, and after the term had expired, the lands were withheld from the lessor by the tenant, or other person possessing the same; the writ commanding the tenant to restore to the demandant the land which the latter had demised to him for a term which was passed; (*ad terminum qui præteriit.*) *Bract.* fol. 318 a. *Reg. Orig.* 227 b. *F. N. B.* 201. 3 *Bl. Com.* 176. 3 *Reeves' Hist. E. Law*, 30. 1 *Roscoe's Real. Act.* 97. This writ was superseded by the action of ejectment, and is now abolished in English law by statute 3 & 4 *Will. IV.* c. 27, s. 36.

**AD TRACTANDUM ET CONSILIUM IMPENDENDUM.** L. Lat. To discuss and give advice. 1 *Bl. Com.* 168.

**AD VALENTIAM.** L. Lat. To, or of the value. *Bract.* fol. 315 b. *Felv.* 71.

**AD VALOREM.** L. Lat. According to the value. *Ad valorem* duties are those which are imposed on goods, merchandise and other articles, at a certain rate *per centum* on their value.

**AD VENTREM INSPICIENDUM.** See *De ventre inspiciendo.*

**AD VITAM.** Lat. For life. *Bract.* fol. 13 b. *In feodo, vel ad vitam*; in fee, or for life. *Id. ibid.*

**AD VITAM AUT CULPAM.** L. Lat. For life, or until misbehavior. In Scotch law. A term of similar import with *quandiu bene se gesserit* (q. v.) in English law. *Stat. 28 Geo. II. c. 7. Jacob.*

**AD VOLUNTATEM.** L. Lat. At will. *Bract.* fol. 27 a.

**AD WARACTUM.** L. Lat. To follow. *Bract.* fol. 228 b. See *Waractum*.

**ADÆQUATIO.** Lat. [from *adæquare*, to equal, or equalize.] In the civil law. A making equal; a sharing equally. *Hotom. in verb. Feud. Cowell, voc. Coparceners.*

**ADAYER.** L. Fr. To provoke. *L. Fr. Dict. Kelham. Adayement*; provocation. *Id.*

**ADDICERE.** Lat. To adjudge or condemn; to assign, allot, or deliver; to sell. In the Roman law, *addico* was one of the three words used to express the extent of the civil jurisdiction of the prætors. 1 *Kaufm. Mackeld. Civ. Law*, 187, note.

**ADDICTIO.** Lat. [from *addicere*, q. v.] An assignment by the sentence of a court. By the old Roman law, if the party who was cast in an action did not obey the sentence of the court within thirty days, he was assigned over (*addictus*) to the successful party, who might commit him to prison till satisfaction was made.\* *Halifax Anal.* b. 3, c. 9, n. 44.

**ADDICTIO IN DIEM.** Lat. In the civil law. A sale made with a clause or agreement that the contract shall not hold if the seller afterwards, and within a certain space of time limited by the contract, shall find another buyer who will make him a more advantageous offer. *Dig. 18. 2. 1. Pothier, Contr. of Sale*, part 3, sec. 3. *Id.* part 5, ch. 2, sec. 4.

**ADDITIO.** Lat. An addition, (q. v.) **Additio probat minoritatem.** An addition, [to a name] proves, or shows minority. 4 *Inst.* 80. *Wingate's Max.* 211, max. 60. This maxim is applied by Lord Coke to courts, and terms of law; *minoritas* being understood in the sense of difference, inferiority, or qualification. Thus, the style of the king's bench is *coram rege*, and the style of the court of chancery is *coram do-*

*mino rege in concellaria*; the addition showing the difference. 4 *Inst.* 80. So by the word *fee*, without more saying, is always intended *fee simple*, fee tail not being intended by it, unless there be added to it the addition of the word *tail*. See *Litt. sect.* 293. *Co. Litt.* 189 a. *Wingate's Max.*, ub. *sup.*

**ADDITION.** The title or description of a person in law proceedings, given in *addition* to his name, for the purpose of more accurate designation, and showing his estate, degree, mystery and place of residence.\* *Termes de la ley. Cowell.* In English law, there are four kinds of *additions*: additions of *estate*, such as yeoman, gentleman, esquire; additions of *degree*, or names of dignity, as knight, earl, marquess, duke; additions of *trade*, mystery or occupation, as scrivener, painter, mason, carpenter; and additions of *place* of residence, as London, Chester, &c. *Id. ibid.* The only additions recognised in American law are those of mystery, and residence.

The object of giving additions to the names of persons is very clearly stated in the statute of 1 Hen. V., c. 5, by which the practice was introduced, and which ordained that, in actions where process of outlawry lay, such additions should be to the name of the defendant, to show his estate, mystery and place of residence, in order that *one man might not be vexed or troubled by the outlawry of another*; [as where there were several of the same name,] but that by reason of the certain *addition*, every person might be known, and bear his own burden. *Cowell. 2 Inst.* 665. A like provision was applied by the same statute to indictments, in order to identify the person of the offender. 4 *Bl. Com.* 306.

**ADDONE, Addonne.** L. Fr. Given to. *Kelham. L. Fr. Dict.*

**ADDOUBEUR.** L. Fr. A promoter, or setter up of causes. *Id.*

**ADDRESSER, Adresser.** L. Fr. To hold up; to erect. *Adresseroient en haut leur maynes dextres*; should hold up on high their right hands. *Id.*

**ADEEM.** [Lat. *adimere*, to take away.] To take away, take back, or revoke, as a legacy. *Ward on Legacies*, 261. See *Ademption*.

**ADEPTIO.** Lat. [from *adimere*, to take away, revoke, adeem.] In the civil law. A revocation of a legacy; an *ademptio*.

tion. *Inst.* 2. 21. pr. Where it was expressly transferred from one person to another, it was called *translatio*. *Id.* 2. 21. 1. *Dig.* 34. 4.

**ADEPTION.** [Lat. *ademptio*, q. v.] A taking away, or revocation; a term derived from the civil law. See *Ademptio*. *Ademption of a legacy* is the taking it away from the party to whom it has been given, arising from a supposed alteration in the testator's intention. Thus, if a man who has a sum of money due to him on a bond, expressly bequeaths it to some person named in his will, and after having done so, calls in the money himself, this is an *ademption* of the legacy, which is said to be *adeemed*. *Ward on Legacies*, 261, 268. *Holthouse. Whishaw.*

**ADEO.** Lat. So, as. *Adeo plene et integre*; as fully and entirely. 10 *Co.* 65. See *Adire*.

**ADEPRIMES.** L. Fr. First, at first, for the first time. *Kelham.*

**ADERERE.** L. Fr. In arrear, behind. *Litt.* sect. 151.

**ADESOUTH.** L. Fr. Under, beneath. *Kelham.*

**ADEVANT, Adavaunt.** L. Fr. Before. *Id.*

**ADFERRUMINATIO.** Lat. [from *ad*, to, and *ferrum*, iron.] In the civil law. The welding together of iron; a species of *adjunctio*, (q. v.) Called also *ferruminatio*. *Dig.* 6. 1. 23. 5. 1 *Mackeld Civ. Law*, 281, § 268.

**ADFINES, Affines.** Lat. [from *ad*, to, and *finis*, a border, or limit.] In the civil law. Relations, or connections by marriage; so called, because the families (*cognationes*), of the husband and wife are connected by the marriage (*per nuptias copulantur*), and the one comes up to the line which divides it from the other, (*et altera ad alterius cognationis finem accedit*.) *Dig.* 38. 10. 4. 3. Thus very expressively distinguishing them from relations by blood, between whom there exists an actual union, without any intervening barrier, (*finis*), or dividing line.

**ADGISANT, Adgisantz.** L. Fr. Adjacent. *Kelham.*

**ΑΔΙΑΘΕΤΟΣ, Adiatheros.** Gr. [from α,

priv., and διατίθημι, *dispono*, to dispose.] In the civil law. Intestate, an intestate; one who fails or neglects to dispose of his property; one who dies without a testament, (*διαθήκη*.) 'H ἐξ ἀδιαθέτου διαδοχή; succession *ab intestato*. *Nov.* 118, c. 3.

**ADIEU, MONEY OF.** See *Money of Adieu*.

**ADIRE, Adyre.** L. Fr. To say. *Kelham.*

**ADIRE.** Lat. In the civil law. To go to; to enter upon. *Cum adit hereditatem*; when he enters upon the inheritance. *Inst.* 2. 19. 4 *Bract.* fol. 227 a. *Aditus, adita*; entered upon. *Hereditas dum jacet non adita*; an inheritance while it lies not entered upon. *Id.* fol. 44 a.

**ADITIO.** Lat. [from *adire*, q. v.] In the civil law. An entering upon an inheritance. *Dig.* 29. 2. See *Adire*.

**ADITUS.** Lat. [from *adire*, to go to.] A public road; being not only a footway (*iter*), and horseway, (*actus*), but also a cart or carriage way: and is either *regia via*, the king's highway for all men, or *communis strata*, a common street belonging to a city or town, or between neighbors. *Co. Litt.* 56 a.

**ADJACENT.** [Lat. *adjacens*, from *adjacere*, to lie to, at, or upon.] Lying near to, or in the neighborhood of. 1 *Cooke's R.* 128. 4 *Peters' Cond. Rep. U. S.* 96. This word formerly signified *adjoining*, as its etymology indicates, but has not now that meaning. *Id. ibid.* See *Abutals*.

**ADJORNARE, Adjournare, Adjurnare.** L. Lat. [from Fr. *adjourner*, q. v.] To adjourn. *Adjornent assisas*; they shall adjourn the assises. *Stat. Westm.* 2, c. 30. Anciently, to summon. See *Adjourn*.

**ADJORNATUS, Adjurnatus.** L. Lat. [from *adjournare*, or *adjurnare*, q. v.] Adjourned. *Quæ quidem recordum et processus adjornata sunt coram vobis*; which record and process are adjourned before you. *Reg. Orig.* 3.

Summoned to appear at a day; summoned to court. See *Adjourn*.

**ADJOURN.** [L. Lat. *adjournare*, *adjournare*, *adjurnare*, from Fr. *adjourner*, from *jour*, a day.] To put off, or postpone to another day, (*ad diem dicere*;) to assign a day (*diem dare*;) to a court, or party; to

dissolve a court for the present, and appoint another day for it to meet again; to continue from one day to another. Applied also to the meetings of legislative and other public bodies, and sometimes to the process of courts. *Spelman. Cowell. Blount. 1 Bl. Com. 186. Steph. Pl. 31, 81. (Am. ed. 1824.)* See *Continuance*.

The proper and radical meaning of the law Latin *adornare*, and French *adjourner*, from which this word is derived, was to assign a day to a prosecuted party, (*diem alicui dicere*,) to appear in court; to summon to court, (*citare, in jus vocare*,) or, in the phrase of the old Salic law, *solem alicui collocare*. *Spelman, voc. Adjournare*. Thus, in the capitularies of the early French kings,—*De hominibus ecclesiasticis qui non erant adjournati*; concerning church vassals who were not adjourned, i. e. summoned. *Capit. Carol. lib. 5, c. 151*. The Saxon *andagan* had nearly the same sense. *LL. Edw. Sen. c. 1. Spelman*. The day thus given was the first day of the party's appearance, answering to the return day of the process by which he was summoned. The use of the word *adjournamentum* in the sense of a summoning to court, the assignment of a day to appear in court, (*diei dictio, citatio, evocatio, denunciatio*,) is frequent in the laws of the Burgundians. *Spelman, ub. sup.*

The French *adjourner*, or *ajourner*, has retained this original sense, but the English *adjourn*, and *adjournment*, have materially departed from it. The idea of a day given or assigned has been in some measure preserved in these words; but it is never a first day of appearance, but always a subsequent day after an appearance once made; a day after a dismissal from court; the idea of dismissal being in fact the primary one. The English words are used, in short, merely in the sense of *postponement* to another day or time, and frequently in that of a final dissolution *without any day*. The entire loss of original meaning appears strikingly in the familiar modern phrase "to adjourn without day," which once would have been an absurdity in terms.

**ADJOURNATUR.** L. Lat. [from *adjournare*, to adjourn.] It is adjourned. A word with which the old reports very frequently conclude a case. 1 *Ld. Raym.* 602. See *Et adjournatur*.

**ADJOURNER.** L. Fr. [from *jour*, a day.] To give, or assign a day; to summon to appear at a day. *Spelman, voc. Adjournare*.

To give another day, that is, a day after a day of appearance; to adjourn. *L. Fr. Dict.*

**ADJUSTER, Adjuster.** L. Fr. To put to; to add or reckon; to make even; to set right. *L. Fr. Dict.*

**ADJUDICARE.** Lat. [from *ad*, to, and *judicare*, to judge; L. Fr. *adjudger*.] To adjudge, to determine; to decree to a person; to assign by judgment, i. e., by the act of a court. *Adjudicatum*; adjudged. *Inst. 4. 17. 7.* See *Adjudicatio*.

In old English law, to forjudge. *Adjudicetur medius de feodo et servitio suo*; the mesne shall be forjudged of his fee and service. *Stat. Westm. 2, c. 9.* See *Forejudge*.

**ADJUDICATIO.** Lat. [from *adjudicare*, q. v.] In the civil law. An adjudication; an assignment by judgment; the adjudging of the ownership of a thing, by a court. One of the legal modes of obtaining property, viz. by the decision of a judge, which takes place in the three actions for partition, viz. *familia herciscundæ, communis dividundo*, and *finium regundorum*, (qq. v.) In these actions, the judge has the right to adjudge to one or the other co-heir or part-owner, the exclusive proprietorship of a thing hitherto held in common, and his judgment transfers, *ipso jure*, the property in the thing adjudged. 1 *Mackeld. Civ. Law*, 286, § 271. *Statim ejus fit cui adjudicatum est*; it immediately becomes his to whom it is adjudged. *Inst. 4. 17. 7.*

**ADJUDICATION.** [Lat. *adjudicatio*, from *adjudicare*, q. v.] The act of giving judgment, or pronouncing a sentence or decree; the judgment itself, so given.

A settlement by judgment, decree or sentence. *Stat. 16 & 17 Car. II. c. 10. Cowell.*

**ADJUDICATION.** In Scotch law. A species of diligence, or process for transferring the estate of a debtor to a creditor, carried on as an ordinary action before the court of session. *Ersk. Inst. b. 2, tit. 12, §§ 39—55.* A species of judicial sale, redeemable by the debtor. *Id. §§ 42—55.* A decret of the lords of session, adjudging and appropriating a person's lands, hereditaments, or any heritable right to belong to his creditor, who is called the *adjudger*, for payment or performance. *Forbes' Inst. part 3, b. 1, ch. 2, tit. 6.*

**ADJUNCTIO.** Lat. [from *adjungere*, to join to, to annex.] In the civil law. Adjunction; a species of *accessio*, whereby

two things belonging to different proprietors are brought into firm *connexion* with each other; such as interweaving, (*intertextura*), welding together, (*adferruminatio*), painting, (*pictura*), writing, (*scriptura*), building, (*inædificatio*), sowing, (*satio*), and planting, (*plantatio*.) *Inst.* 2. 1. 26—34. 1 *Mackeld. Civ. Law*, 281, § 268. See *Accessio*.

**ADJUNCTUM.** Lat. Incident. See *Extincto subjecto*, &c.

**ADJUSTMENT.** In marine insurance. The adjustment of a loss is the settling and ascertaining the amount of the indemnity which the assured, after all allowances and deductions are made, is entitled to receive under the policy, and fixing the proportion which each underwriter is liable to pay: a kind of account stated, or agreement between the parties, as to what the particular average, or partial loss shall amount to. *Smith's Merc. Law*, 244. 2 *Archb. N. Prius*, 200. 3 *Kent's Com.* 242, 335.

**ADMALLARE.** L. Lat. [from *ad*, to, and *mallum*, a court.] In old European law. To cite or summon to court; to sue. *L. Salic.* tit. 59. *Marculf. lib.* 1, c. 21. *Spelman*.

**ADMEASUREMENT.** [L. Lat. *admensuratio*, *amensuratio*.] A measuring out: an assignment by measure; an adjustment, or allotment according to certain fixed limits, or in certain proportions.

The name of the writ for making such assignment or adjustment, and which lay at common law against persons who usurped more than their share of any right or privilege. See *infra*.

**ADMEASUREMENT OF DOWER.** *Writ of.* [L. Lat. *breve de admensuratione dotis*.] In English law. The name of a writ to which an heir is entitled, where a man's widow, after his decease, holds from the heir more land, as dower, than of right belongs to her; or where the heir being within age, or his guardian, has assigned to her more than she ought to have. The operation of the writ, (which however is, in a great measure, obsolete,) is to fix the amount of dower to which the widow is entitled, and to restore the overplus to the heir. *Reg. Orig.* 171 a. *F. N. B.* 148 F. *Termes de la ley.* 2 *Bl. Com.* 136. 3 *Id.* 183. 2 *Crabb's Real Prop.* 145, § 1148.

This writ has been abolished in New-York, and the term *admeasurement* of dower is there used to signify the statutory remedy for the assignment of dower, either by the

widow, where her dower has not been assigned to her, or by the heirs, in cases where the widow has neglected to apply for her dower. 2 *N. Y. Rev. Stat.* [488.] 400.

**ADMEASUREMENT OF PASTURE.** *Writ of.* [L. Lat. *breve de admensuratione pasturæ*.] In English law. A writ which lies between those that have common of pasture appendant, or by vicinage, in cases where any one or more of them surcharges the common with more cattle than they ought. *Bract. fol.* 229 a. *Reg. Orig.* 156 b. *F. N. B.* 125 B. *Termes de la ley.* 3 *Bl. Com.* 238. 1 *Crabb's Real Prop.* 318, § 358. The writ is directed to the sheriff, reciting a complaint that the defendant has *surcharged* (*superoneravit*), the common, and commanding the sheriff to admeasure and apportion it. 3 *Bl. Com.* 238. Under this process a jury, with the sheriff, apportioned the quantity of cattle to the extent of the ground, and the number of the proprietors. 3 *Kent's Com.* 419. In most of the United States, this remedy is now superseded either by the action of ejectment, or action on the case. *Id. ibid.* See *Common, Surcharge*.

**ADMENSURARE.** L. Lat. [from *ad*, to, and *mensura*, measure.] To admeasure. *Breve de communi pastura admensuranda*; a writ for admeasuring common of pasture. *Reg. Orig.* 157. See *Amensurare*.

**ADMENSURATIO.** L. Lat. [from *admensurare*, q. v.] Admeasurement. *Reg. Orig.* 156, 157. See *Admeasurement*.

**ADMINICLE.** [Lat. *adminiculum*, q. v.] In Scotch law. A collateral deed or writing, referring to another which has been lost, and which it is in general necessary to produce before the tenor of the lost deed can be proved by parol evidence. *Ersk. Inst.* b. 4, tit. 1, § 55.

Used as an English word in the statute of 1 Edw. IV. c. 1, in the sense of aid, or support.

**ADMINICULAR.** [from *adminiculum*, q. v.] Auxiliary to. "The murder would be *adminicular* to the robbery," [i. e. committed to accomplish it.] Story J., 3 *Mason's R.* 121.

**ADMINICULATOR.** L. Lat. [from *adminiculum*, q. v.] An officer in the Romish church, who administered to the wants of widows, orphans, and afflicted persons. *Spelman*.



**ADMINICULUM.** Lat. Aid or support. *Non in toto sine adminiculo relinquunt*; they did not leave them wholly without assistance. *Inst.* 3. 2. 7. *Cum juris adminiculo concurrente*; with the support of right concurring. *Bract.* fol. 38 b, 44 a.

A species of evidence, not conclusive in itself, but becoming so when conjoined with other proofs; [cumulative, or corroborative testimony.] *Best on Presumptions*, 13, note (f'). See *Adminicle*.

That which belongs to a thing as accessory; that which is necessary to its complete use and enjoyment. 1 *Mackeld. Civ. Law*, 348, note (d).

Whatever appertains to any judicial proceedings, writs, records, &c. *Reg. Jud.* 30.

**ADMINISTER.** [from Lat. *administrare*, q. v.] To manage; to take charge and dispose of the personal property of an intestate according to law.\* Used in this sense in the statute 31 Edw. III., stat. 2, c. 11. *Cowell*. 2 *Reeves' Hist. Eng. Law*, 387. Applied in the civil law to the management of the estate of a minor. See *Administrare*.

**ADMINISTRARE.** Lat. In the civil law. To manage; to take, or have charge of. *Tutelam administrare*; to undertake a guardianship. *Inst.* 1. 25. 9. *Ut solus administret*; to have the sole administration or management. *Id.* 1. 24. 1. Used in the same sense with *gerere*. *Id. ibid.*

In the common law. To administer; to take charge and dispose of the effects of an intestate. *Plene administravit* (q. v.); he has fully administered.

**ADMINISTRATIO.** Lat. [from *administrare*, q. v.] In the civil law. Management, or charge; the management of the estate or affairs of a minor or ward. *Inst.* 1. 24. 2. *Id.* 1. 26. 7.

Management by one of full age, of his own affairs. *Bract.* fol. 11 b. Management by an attorney, of the business of his principal. *Id.* fol. 41 b.

**ADMINISTRATION.** [Lat. *administratio*, q. v.] The management of the estate of an intestate, or of a testator having no executor. 2 *Bl. Com.* 496. 2 *Steph. Com.* 232. 2 *Kent's Com.* 409. 2 *Reeves' Hist. Eng. Law*, 387:

The right to the management of such an estate, conferred by what are termed letters of administration. (q. v.) Used in this sense in the common expressions "to grant administration," "to take out administration."

This word, though ordinarily confined in its application to the management of an es-

tate by an administrator, properly so called, includes also, in a larger sense, management by an executor; the strictly corresponding term *execution* not being in use. Anciently, on the contrary, *executio* was the general term, applicable to administrators as well as executors. See *Executio bonorum*.

**ADMINISTRATION cum testamento anexo.** L. Lat. Administration with the will annexed. Administration granted in cases where a testator makes a will, without naming any executors; or where the executors who are named in the will are incompetent to act, or refuse to act; or in case of the death of the executors, or the survivor of them. 2 *Bl. Com.* 503, 504. 2 *N. Y. Rev. Stat.* [71], 15, § 14.

**ADMINISTRATION de bonis non, or de bonis non administratis.** Administration of the goods not administered. Administration granted for the purpose of administering such of the goods of a deceased person as were not administered by the former executor or administrator. 2 *Bl. Com.* 506.

**ADMINISTRATION durante absentia.** Administration during absence. Administration granted during the absence of an executor. 2 *Bl. Com.* 503. 1 *Lutw.* 342. See 8 *Cranch*, 9. In New-York, this is a case for granting special letters *ad colligendum*. 2 *Rev. Stat.* [76], 19, § 38.

**ADMINISTRATION durante minore etate.** Administration during minority. Administration granted during the minority of an executor. 2 *Bl. Com.* 503. 5 *Co.* 29, 30. In New-York, this is a case for granting administration *cum testamento anexo*. 2 *Rev. Stat.* [69], 13, § 3. *Id.* [71], 15, § 14.

**ADMINISTRATION pendente lite.** Administration during the suit. Administration granted during the pendency of a suit touching the validity of a will. 2 *Bl. Com.* 503. In New-York, this is a case for granting special letters *ad colligendum*. 2 *Rev. Stat.* [76], 19, § 38.

**ADMINISTRATOR.** L. Lat. and Eng. [from *administrare*, q. v.] He who administers, or has a right to administer; he to whom the right of administration has been granted by law. See *Administer*, *Administration*. In the statute of 31 Edw. III., st. 2, c. 11, by which the law of administration was established, the administrator is called the *deputy of the ordinary* by whom he was appointed. 2 *Reeves' Hist. Eng. Law*, 387. *Theololl Dig.* lib. 1, c. 19.

**ADMINISTRATRIX.** L. Lat. and Eng. [from *administrare*, q. v.] A female who administers, or to whom the right of administration has been granted. See *Administer*, *Administration*.

**ADMIRAL.** [Fr. *amerel*; L. Lat. *admirallus*, *admiralis*, *admiralius*, or *amiralius*; from Gr. *αμνηαλιος*, from Arab. *amir*, a chief, and Gr. *αλιος*, of the sea.] A naval commander, officer or magistrate; either chief, or subordinate.\* *Spelman*, voc. *Admiralius*. Called also anciently *capitaneus et custos maris*, (captain and warden of the sea;) *praefectus maris, sive classis*, (governor of the sea, or of the fleet;) *archithalassus*, or *thalassiarcha*, (ruler of the sea, that is, of naval forces or affairs.) *Chart.* 48 *Hen. III.* *Co. Litt.* 260 b.

The title of *admiral* is now considered as exclusively belonging to naval commanders of the highest rank. The office of admiral of England, or Lord high admiral, created in the reign of Edward I., is still recognised, although it has latterly been exercised by commissioners termed Lords of the Admiralty. *Spelman*, *ub. sup.* *P. Cyclopaedia*. An important feature of this office was the judicial cognizance of maritime causes which belonged to it, out of which has grown the present court of admiralty. Neither the office nor title has been adopted in the United States. *Spelman*, in his elaborate exposition of this word, has traced its origin to the *ameralius* of the Eastern empire. See *Ameralius*.

**ADMIRALTY, or COURT OF ADMIRALTY.** [L. Lat. *admiralitas*, or *curia admiralitatis*.] The court of the admiral; a maritime court established in England about the reign of Edward III., and held before the Lord high admiral or his deputy, a judge of the admiralty, and now always held before the judge; having cognizance of all maritime causes, and injuries committed upon the high seas, or on those parts of the coast which are not within the body or limits of an English county, (*infra corpus comitatus*.) or within the jurisdiction of the common law. *Spelman*, voc. *Admiralius*. 3 *Bl. Com.* 69. 4 *Id.* 268. 2 *Steph. Com.* 435, 724. 4 *Id.* 330. 2 *Gallison's R.* 398. 1 *Sumner's R.* 553—566. It is a court of criminal and civil jurisdiction, the latter being also twofold, and holden before distinct tribunals; one, the ordinary court for deciding controversies relating to contracts made at sea, [or maritime contracts], called the *Instance court* (q. v.); the other, called the *Prize court* (q. v.), for determining the right to maritime captures and seizures.

1 *Wooddes. Lect.* 83, 84. 1 *Kent's Com.* 353, 354. See *Maritime causes*. By the recent statute of 3 & 4 Will. IV., c. 36, the criminal jurisdiction of this court has been conferred upon the new court established in London, called the "Central criminal court;" and its civil jurisdiction has been extended, and its practice materially modified by the later statute of 3 & 4 Vict. c. 65. See 3 *Steph. Com.* 727. 4 *Id.* 331. Its proceedings are generally according to the course and method of the civil law, like those of the ecclesiastical courts, upon which account it is usually held at Doctors' Commons, in London; but it is no court of record, any more than the spiritual courts. 3 *Bl. Com.* 69. 3 *Steph. Com.* 436. 2 *Chitt. Gen. Pr.* 508—539.

The district courts of the United States possess all the powers of courts of admiralty, whether considered as instance or as prize courts; no distinction or division in that respect being recognised as in England. 3 *Dallas' R.* 6. And see further, 1 *Kent's Com.* 353—380. *United States Digest*, Admiralty.

**ADMISSION.** [Lat. *admissio*, from *admittere*, from *ad*, to, and *mittere*, to send.] A taking, or letting in; a permission to exercise certain rights or privileges, to fill an office, &c.; as the *admission* of an attorney or counsellor to practice; the *admission* of an individual as a member of a corporation; the *admission* of a clerk to a benefice, &c.

An acknowledgment, acquiescence, consent or allowance; as the *admission* of a fact in evidence; the *admission* of service of papers in practice.

**ADMISSION.** In English ecclesiastical law. The act of the bishop, who, on approval of the clerk presented by the patron, after examination, declares him fit, (or able, *habilem*.) to serve the cure of the church to which he is presented, by the words *admitto te habilem*; I admit thee able. *Co. Litt.* 344 a. 4 *Co.* 79. 1 *Crabb's Real Prop.* 138, § 123.

**ADMITTANCE.** In English law. The form of giving seisin of a copyhold estate, corresponding with livery of seisin of a freehold; one of the formalities necessary for the conveyance of copyhold, the other two being surrender, and presentment.\* 2 *Bl. Com.* 366—370. 2 *Steph. Com.* 52, 54. *Burton, Real Prop.* 390, pl. 1263. See *Copyhold, Surrender*.

**ADNIHILARE.** L. Lat. [from *ad*, to, and *nihil*, nothing.] To reduce to nothing;

to treat as nothing ; to hold as, or for nought. *Judicia in curia regis reddita non adnihilentur, sed stent in suo robore quousque per errorem aut attinctam adnullentur*; judgments rendered in the king's court shall not be held for nought, but shall stand in force until they be annulled by error or attain. 2 *Inst.* 360.

*Adnichile* is used in the statute 28 Hen. VIII., c. 7 ; and *adnichilate* by old English writers. *Richardson's Dict.*

ADNOTATIONE, or ANNOTATIONE PRINCIPIS. Lat. By the signature, or sign manual of the prince, or emperor. The mode of excusing casual homicide in the imperial law. *Cod.* 9. 16. 5. 4 *Bl. Com.* 187.

ADNULLARE. See *Adnihilare*.

ADOLESCENTIA. Lat. [from *adolescere*, to grow.] In the civil law. Adolescence, or youth ; the age between puberty and majority ; commencing at fourteen in males, and twelve in females. 1 *Mackeld. Civ. Law*, 136, § 126.

ADONQUES, *Adonque, Adunque, Adoun.* L. Fr. Then. *Litt. sect.* 157. *Kelham.*

ADOPTIO. Lat. [from *adoptare*, which from *ad*, to, and *optare*, to choose.] In the civil law. A taking or choosing of another's child as one's own\* ; adoption. This was done in two ways ; by imperial rescript, (*principali rescripto*), which gave authority to adopt persons of either sex, who were *sui juris*, (i. e. independent ; ) and by authority of the magistrate, (*imperio magistratus*), which allowed the adoption of persons actually under the power of their parents. *Inst.* 1. 11. 1. The last of these methods was properly *adoptio*, or adoption, the former being termed *arrogatio*, or *adrogatio*. (q. v.) *Id. ibid. Dig.* 1. 7. 1. The adoption of children is still regulated by law in Germany and France, but is not recognised in English or American law.

ADOPTION. See *Adoptio*.

ADOPTIVUS. Lat. [from *adoptare*, to adopt.] Adoptive. Applied both to the parent adopting, and the child adopted. *Inst.* 2. 13. 4. *Id.* 3. 1. 10—14.

ADRECTARE, *Adretiare, Addressare.* L. Lat. [from *ad*, to, and *rectum*, right ; *ad rectum ire, recto stare.*] To do right ; to satisfy ; to make amends. *Gerv. Doroborn.* A. D. 1170. *Cowell.* See *Ad rectum*.

ADRHAMIRE, *Arhamire, Arramire, Arramare.* L. Lat. [from old Fr. *arramir*.] To undertake, declare, or promise solemnly ; to pledge. *Spelman.* See *Arramare*.

ADS, *Adsm., Ats.* In practice. A contraction of *ad sectam*, used in entitling papers on the part of the defendant in a suit ; as, "C. D. *ads.* A. B." See *Ad sectam*.

ADSALLIRE, *Assalire.* L. Lat. [from Fr. *assaillir*, from Lat. *assilire*, to assail.] To assail or set upon ; to make an assault or attack upon one, (*impetum in aliquem facere, adoriri, invadere.*) *Spelman.* *Marculf.* lib. 1, form. 29, 39, cited *ibid.*

ADSCRIPTUS, *Ascriptus.* Lat. [from *ascribere*, to write to, enrol, annex.] Enrolled or registered ; united by enrolment ; united, joined, or annexed generally. *Adscriptus glebæ* ; annexed to the soil. Slaves in the middle ages were *adscripti glebæ*, and were conveyed by sale together with the farm or estate to which they belonged. 1 *Robertson's Charles V.*, Appendix, note ix.

ADSCRIPTITIUS, *Adscripticius, Ascriptitiis.* L. Lat. [from *ascriptus*, q. v.] United, annexed, or bound to. *Adscriptiti glebæ* ; annexed, bound, or adstricted to the soil ; employed in cultivating it, and in performing other rural services for the owner. *Hargr. Co. Litt.* Note 1, to lib. 2. A term applied to tenants by villein socage, and commonly supposed to denote a condition approaching nearer to that of slaves than of freemen. *Id. ibid.* But, according to Bracton, they were so called because, so long as they did the appointed services, they had the privilege not to be removed from the soil, (*gaudent privilegio quod a gleba amoveri non poterunt*), and were in fact freemen. *Bract.* fol. 7 a. 209 a. *Id.* fol. 4 b.

ADSECURARE. L. Lat. [from *ad*, to, and *securus*, secure.] To make secure ; to secure by giving pledges or sureties ; (*pignore vel fidejussione interposita securum facere.*) *Spelman.*

ADTRACTUS. L. Lat. [from *attrahere*, to draw to.] A thing acquired or purchased ; a purchase ; (*comparatum, acquisitum, perquisitum.*) *Spelman.* A term of frequent occurrence in Marculfus, and ancient charters.

ADTUNC. L. Lat. Then. 1 *Ld. Raym.* 123. *Adtunc existens* ; then being. *Yelv.* 28.

**ADULT.** [Lat. *adultus*, from *adolescere*.] In the civil law. One who has arrived at the age of *adolescencia*, or youth. A term applied to males after the age of fourteen, and to females after twelve. 1 *Mackeld. Civ. Law*, 136, § 126. See *Adolescencia*.

In the common law. One who is of full age. 1 *Swanst. R.* 553, 557—559.

**ADULTERIUM.** Lat. Adultery, (q. v.)

In old English law. A fine imposed for the offence of adultery and fornication, (Sax. *legewite*, or *lairwite*, q. v.); the privilege of imposing such a fine, which the lords of some manors possessed. *Spelman. Domesday Book*, cited *ibid*.

**ADULTERY.** [Lat. *adulterium*.] Criminal conversation between a married person and one of the opposite sex, whether married or single, being in the former case sometimes called *double*, and in the latter, *single* adultery.\* In England, it was anciently punished as a crime, but is now left to the coercion of the spiritual courts, the temporal courts taking no cognizance of it, otherwise than as a private injury; for which, in the case of adultery by a wife, the husband may have an action of trespass against the adulterer. 4 *Bl. Com.* 65. 3 *Id.* 139.

In the United States, it is generally punished as a public offence, by fine and imprisonment. See *Laws of the several states, United States Digest*, Adultery.

**ADVANCEMENT.** [L. Lat. *advancementum*.] A payment or appropriation of money, or a settlement of real estate made by a parent to, or for a child, in *advance*, or anticipation of the distributive share to which such child would be entitled after his death, and with a view to a portion or settlement in life.\* 2 *Bl. Com.* 517. *Lovell on Wills*, 140, *et seq.* 2 *N. Y. Rev. St.* [97,] 37, §§ 76—78. A giving by anticipation the whole, or a part of what it is supposed a child will be entitled to, on the death of the party making the advancement. Parker, C. J., 17 *Mass. R.* 356, 358.

The maintenance or education, or giving of money to a child, without a view to a portion or settlement in life, is not an advancement. 2 *N. Y. Rev. St.* [98,] 37, § 78. *Lovell on Wills*, 140, 220. 4 *Kent's Com.* 418. *United States Digest*, Advancement.

**ADVANTAGIUM.** L. Lat. An advantage. *Co. Entr.* 484. *Towns. Pl.* 50.

**ADVENA.** Lat. [Gr. *ανωρος*.] One

who comes from abroad, [*colonus adveniens*.] *Dig.* 50. 16. 239. 4.

**ADVENIR.** L. Fr. [from Lat. *advenire*, to come to, to happen.] To come to; to become. *Kelham. Adveigne*; happens, becomes. *Id.*

**ADVENT.** [Lat. *adventus*.] A period of time recognised by the English common and ecclesiastical law, beginning on the Sunday that falls either upon St. Andrew's day, being the 30th of November, or the next to it, and continuing to Christmas day. *Cowell. Termes de la ley. Wharton.*

**ADVENTITIUS.** Lat. [from *advenire*, to come to, to happen.] That which comes from without, from another person, or thing; adventitious; foreign. *Dos adventitia*; a dowry or portion given by another person than a parent. *Bract. fol.* 92.

Accidental, incidental, accessory.

**ADVENTURA.** L. Lat. An adventure. 2 *Mon. Angl.* 615. *Towns. Pl.* 50.

**ADVENTURE.** Fr. and Eng. [from Lat. *advenire*, to happen.] A chance, or accident. *En aventure si*; in case. *Kelham.* See *Misadventure*.

A risk, or hazard; an enterprise, [L. Lat. *periclitatio, aventura*;] a thing sent to sea, at the risk of the person sending it.\* *Whishaw.*

Something which a seaman is permitted to carry abroad with a view to sell for profit. *Webster.*

**ADVERSE POSSESSION.** In the law of titles. The possession of lands for a certain length of time *adversely*, or in opposition to the title of another; the possession of a person claiming under a title, or under color of a title *adverse* to, or inconsistent with that of another claimant who is out of possession.\* To make a possession adverse, so as to constitute a bar to the assertion of a legal title by the owner of it, or by one against whom the adverse occupant brings ejectment, it must be an actual, continued, visible, notorious, distinct and hostile possession. *Duncan, J., 6 Serg. & Rawle*, 21. 2 *Smith's Lead. Cas.* (Am. ed.) 416, note. A possession, to be adverse, must be inconsistent with the title of the claimant who is out of possession; it must be accompanied with a claim of title, exclusive of the rights of all others, and must be definite, notorious and continued for the period of twenty years. 24 *Wendell's R.* 587. See 1 *Burr.* 60. 2 *Smith's Lead. Cas.* 396. 2 *Jac. & Walk*

1, 139, 140. 8 *Cranch R.* 462. 7 *Whentons R.* 59. 5 *Peters' R.* 402. *Clerke's N. Y. Digest*, Adverse possession.

*Adversary* is used for adverse, by Marshall, C. J., 8 *Cranch*, 462, and Story, J., 7 *Wheaton*, 59.

**ADVICE.** In mercantile usage. Information ; direction or instruction given by a correspondent. *Chitty on Bills*, 162, 166.

**ADVISAMENTUM, Avisamentum.** L. Lat. [from *advizare*, (q. v.)] Advisement, advice. *Towns. Pl.* 51. *Prynne Rec.* 85, 230.

**ADVISARE, Advisari.** L. Lat. In old practice. To advise, to be advised ; literally, to see to, to look to. *Curia advisari vult* ; the court will advise, i. e. deliberate, or consult together, before giving their opinion, or judgment.

**ADVISE.** [L. Lat. *advizare*, q. v.] To consider, deliberate, consult ; as a court does, after the argument, and before the decision of a cause.

To give advice, or counsel.

In mercantile usage. To give information, or notice of facts. See *Advice*.

**ADVISEMENT.** [L. Lat. *advisamentum*.] The deliberation, or consultation of a court, after the argument of a cause by counsel, and before delivering their opinion.

**ADVOCARE.** L. Lat. [from *ad*, to, and *vocare*, to call.] To call to, or upon, to call in aid ; to call upon one to warrant another's title, to vouch. *Spelman*, voc. *Advocatus*. See *Vocare*, *Vouch*.

To avow, (advow), to acknowledge, or openly admit, adopt, justify and maintain a thing ; (*rem factam agnoscere, rem in se suscipere*.) *Spelman*, ub. sup. *Advocare filium* ; to acknowledge a child. *Bract.* fol. 63 b. *Dominus cum [factum] advocaverit, suam facit injuriam* ; when the lord avows (adopts) the act, he makes the wrong his own. *Id.* fol. 171 b, 204 b.

To advocate, defend, or protect. *Spelman*, voc. *Advocatus*. *Si non dominum habuerit qui advocet eum* ; if he have no lord who will defend him. *Bract.* fol. 152 a.

To assert the right of advocacy, or patronage, (*jus patronatus*) ; to exercise the right of presentation to a vacant benefice ; to call a clerk to such benefice, to present him.\* *Spelman*, ub. sup. *Glanv.* lib. 4, c. 1. *Skene de verb. signif.* cited in *Cowell*.

To claim. *Animalia vagantia quæ nullus* —advocat ; wandering animals, which no

one claims. *Bract.* fol. 120 a. To avow, in replevin. *Reg. Orig.* 83 a.

**ADVOCATA.** L. Lat. [from *advocare*, q. v.] A patroness ; a woman who had the right of presenting to a church. *Liber Ramesiens.* sect. 140, cited in *Spelman*, voc. *Advocatus*.

**ADVOCATE.** [Lat. *advocatus*, from *advocare*, to call to, or upon, to defend.] One who is called upon to assist or defend another ; a defender, patron, or protector ; one called to give legal advice or assistance, particularly to plead (in the popular sense) another's cause in court. A person learned in the law, and duly admitted to practice, who assists his client with advice, and pleads for him in open court.\* *Holthouse*. An *advocate*, in the civil and ecclesiastical courts, is the same as a *counsellor*, or counsel in the courts of common law. 3 *Bl. Com.* 25, 26. The term is more commonly used in the Scotch than in the English law. See *Bar-rister*, *Counsel*, *Counsellor*.

**ADVOCATI FISCAL.** Lat. In the civil law. Advocates of the fisc, or revenue ; fiscal advocates. *Cod.* 2. 9. 1. *Id.* 2. 7. 13. Answering in some measure to the king's counsel in English law. 3 *Bl. Com.* 27.

**ADVOCATIA.** L. Lat. [from *advocare*, q. v.] Advocacy, or patronage. See *Advocatio*.

**ADVOCATIO.** L. Lat. [from *advocare*, q. v.] An advowson ; the right of presentation to a vacant church or benefice, (*jus patronatus, jus presentandi, jus advocacionis* ; anciently called *jus advocaticium*.) *Spelman*, voc. *Advocatus*. *Reg. Orig.* 30 a. *Glanv.* lib. 4, c. 1. *Bract.* fol. 53 a. A taking into protection or patronage, (*in clientelam receptio*.) 2 *Bl. Com.* 21. *Co. Litt.* 17 b, 119 b. See *Advowson*.

An avowry in replevin. *Reg. Orig.* 83 a. See *Avowry*.

**ADVOCATOR.** L. Lat. One who calls on, or vouches another to warrant a title ; a voucher. *Advocatus* ; the person called on, or vouched ; a vouchee. *Towns. Pl.* 45.

**ADVOCATUS.** Lat. [from *advocare*, q. v.] An advocate or pleader. *Bract.* fol. 372 b. See *Advocate*.

A patron, or defender ; a person having the right to present to a church (*jus advocacionis*) ; an advowee, (q. v.) *Glanv.* lib. 5, c. 14. *Bract.* fol. 240 b. *Reg. Orig.* 30. One who is called or vouched to war-

ranty; a vouchee. *Spelman*, voc. *Advocatus*. See *Vouchee*.

ADVOW. See *Advocare*, *Avow*.

ADVOWEE. [L. Lat. *advocatus*, L. Fr. *advouè*, *avouè*.] A patron; one who has a right to present to a benefice. *Stat.* 25 *Edw. III.*, st. 5. *Cowell*.

ADVOWRY. See *Avowry*.

ADVOWSON, *Advowzen*. L. Fr. and Eng. [perhaps a contraction of *advocation*; L. Lat. *advocatio*, q. v.] In English ecclesiastical law. The right of presentation to a church or ecclesiastical benefice; the right of presenting a fit person to the bishop, to be by him admitted and instituted to a certain benefice within the diocese, which has become vacant. 2 *Bl. Com.* 21. *Co. Litt.* 119 b, 120 a. The person enjoying this right is called the patron (*patronus*) of the church, and was formerly termed *advocatus*, the advocate or defender, or in English, *advowee*. *Id. ibid.* 1 *Crabb's Real Prop.* 129, § 117. The right itself is termed an *advowson*, (*advocatio*), because the patron is bound to advocate or protect (*advocare*) the rights of the church, and of the incumbent whom he has presented. *Spelman*, voc. *Advocatus*. See *Advocatus*, *Patron*, *Incumbent*, *Presentation*.

ADVOWSON APPENDANT. An advowson annexed to a manor, and passing with it, as incident or appendant to it, by a grant of the manor only, without adding any other words. 2 *Bl. Com.* 22. *Co. Litt.* 120, 121. 1 *Crabb's Real Prop.* 130, § 118.

ADVOWSON IN GROSS. An advowson separated from the manor, and annexed to the person. 2 *Bl. Com.* 22. *Co. Litt.* 120. 1 *Crabb's Real Prop.* 130, § 118. 3 *Steph. Com.* 116.

ADVOWSON PRESENTATIVE. The usual kind of advowson, where the patron has the right of presentation to the bishop, or ordinary, and moreover to demand of him to institute his clerk, if he finds him canonically qualified. 2 *Bl. Com.* 22. 1 *Crabb's Real Prop.* 131, § 119.

ADVOWSON COLLATIVE is where the bishop happens himself to be the patron, in which case (presentation being impossible, or unnecessary,) he does by one act, which is termed *collation*, or conferring the benefice, all that is usually done by the separate acts

of presentation and institution. 2 *Bl. Com.* 22, 23. 1 *Crabb's Real Prop.* 131, § 119. See *Collation*.

ADVOWSON DONATIVE is where the patron has the right to put his clerk in possession by his mere gift, or deed of donation, without any presentation to the bishop, or institution by him.\* 2 *Bl. Com.* 23. 1 *Crabb's Real Prop.* 131, § 119.

ADVOWTRY, *Avowtry*. Adultery, so called in old statutes. *Advowterer*; an adulterer; *advowtress*, an adulteress. *Cowell*, voc. *Adultery*. *Termes de la ley*, voc. *Avowterer*.

ÆDIFICARE. Lat. [from *ædis*, a house, and *facere*, to build.] To make, or build a house; to erect a building.

Ædificare in tuo proprio solo non licet quod alteri nocent. It is not lawful to build on your own land what may injure another. 3 *Inst.* 201. A person has no right to erect a building on his own land which interferes with the due enjoyment of adjoining premises, and occasions damage thereto, either by overhanging them, or by the flow of water from the roof and eaves upon them; unless a legal right so to build has been conceded by grant, or may be presumed by user, or by the operation of a statute. *Broom's Max.* 172.

Ædificatum solo solo cedit. What is built upon land belongs to, or goes with the land. *Broom's Max.* 172. *Co. Litt.* 4 a. See *Cedere*, *Solum*, *Cujus est solum*, &c.

ÆDITUS. *Editus*. Born. *Bract.* fol. 70 a, 278 a.

Passed, as a statute; put forth, or promulgated. See *Editus*.

ÆEL, *Ail*. L. Fr. A grandfather. See *Aieul*, *Ayle*. *Aele*; a grandmother. *L. Fr. Dict.*

ÆQUITAS, *Equitas*. Lat. [from *æquus*, equal, even.] Equity. *Bract.* fol. 3 a. *Dicitur æquitas quasi equalitas*; it is called equity, being as it were equality. *Id. ibid.* See *Equity*.

*Æquitas est rerum convenientia, quæ in paribus causis, paria desiderat jura, et omnia bene coæquiparat*; equity is the fitting together, or adjustment of things, which, under equal [the same] circumstances, requires equal [the same] rules, and properly equalizes all things. *Id. ibid.* This definition is quoted by Lord Coke, though with considerable verbal alteration. *Co. Litt.* 24 b.

*Æquitas est correctio legis generaliter lata, quâ parte deficit*; equity is the correction of a law passed in general terms, in the part where it is defective.\* *Plowd.* 375. *Branch's Princ.* *Æquitas est correctio quædam legi adhibita, quia ab eâ abest aliquid propter generalem sine exceptione comprehensionem*; equity is a certain correction applied to a law where something is wanting to it, on account of its general comprehensiveness making no exception. *Id.* *Æquitas est perfecta quædam ratio quæ jus scriptum interpretatur et emendat; nulla scriptura comprehensa, sed solum in verâ ratione consistens*; equity is a certain perfect reason, which interprets and amends the written law, comprehended in no writing, but consisting in right reason alone. *Co. Litt.* 24 b. *Æquitas est verborum legis sufficiens [efficacius] directio, qua una res solummodo cavetur verbis, ut omnis alia in æquali genere, iisdem caveatur verbis*; equity is the proper application of the words of the law, where one thing only is provided for in terms, in order that every other thing of the same kind may be provided for by those same words. *Branch's Princ.\* Plowd.* 467.

*Æquitas sequitur legem.* Equity follows law. *Gilb.* 136. Courts of equity must follow, not lead the law in all cases to which the rules of common law apply; they cannot, for instance, establish a different rule of property from that which the law has established; but where the law is ineffectual, equity steps in to give redress, following, however, the rules of law. 2 *Bl. Com.* 330. *Dougl.* 21. Lord Kenyon, C. J., 4 *T. R.* 650. *Broom's Max.* 38.

*ÆQUIVOCUM, Equivocum.* Lat. Of various significations, (*multiplex.*) *Hob.* 125. *Verbum* or *nomen æquivocum*; a word having several senses. *Litt. sect.* 234. *Co. Litt.* 154 b. 7 *Man. & Gr.* 504. Lord Coke distinguishes between *æquivocum æquivocans*, a word of divers several significations, and *æquivocum æquivocatum*, one reduced to a certain signification (*univocum.*) *Co. Litt. ub. sup.*

Of doubtful signification, (*ambiguum.*) *Hob.* 125.

Depending for its meaning upon its connexion with other words, (*relativum.*) *Id.*

*ÆQUUS, Æquum.* Lat. Equal, even, equitable, just. *Æquum et bonum est lex legum.* What is equitable and good is the law of laws. *Hob.* 224.

*Æquior est dispositio legis quam hominis.* The disposition of the law is more equitable than that of man. 8 *Co.* 152.

Bracton makes a distinction between *æquus* and *justus*. *Bract.* fol. 3 a.

*ÆSNECIA, Æsnetia.* L. Lat. [L. Fr. *aisneesse*, from *aisne*, eldest, or first born.] *Esneey*; the right or privilege of the eldest born. *Spelman.* *Glanv.* lib. 7, c. 3.

The privilege allowed the eldest daughter of drawing first, in the partition of lands by lot, (*prima pars cernendæ hæreditatis, protocia*;) called also *pars enecia, enitia*, or *eneia*, (Fr. *l'eigne part.*) *Spelman.* *Bract.* fol. 75. See *Esneey, Pars enitia*.

*ÆSTIMATIO.* Lat. [from *æstimare*, to value; L. Fr. *æstime*.] Valuation, rating, consideration. *Corpus humanum*, (*liberum corpus*;) *non recipit estimationem*. The human body, [the body of a freeman,] does not admit of valuation. *Hob.* 59.

*Æstimatio præteriti delicti ex postremo facto nunquam crescit.* The estimation (rating of the degree, or nature) of a past offence never increases from (is never influenced in the way of aggravation by) a subsequent fact or act. *Bacon's Max.* 38, reg. 8. *Broom's Max.* 17. The law, in judging of the character of a past offence, never allows a subsequent act or matter to be taken into account, so as to aggravate it.\* The law construeth neither penal laws nor penal facts by intendments, but considereth the offence in degree, as it standeth at the time when it is committed; so as, if any circumstance or matter be subsequent, which, laid together with the beginning, should seem to draw it to a higher nature, yet the law doth not extend or amplify the offence. Therefore, if a man be wounded, and the percussor [striker] is voluntarily let go by the jailor, and after death ensueth of the hurt, yet this is no felonious escape in the jailor. *Bacon's Max. ub. sup.*

Lord Bacon illustrates this maxim by several cases from the old books, but makes no sort of reference to the civil law from whence it is derived: (*Nunquam crescit ex postfacto præteriti delicti æstimatio*;) the difference consisting only in the arrangement of the words. *Dig.* 50. 17. 139. 1.

The principle of this maxim forbids the passage of *ex post facto* laws. See *Ex post facto*.

*ÆSTIMATIO CAPITIS.* L. Lat. [Sax. *were*.] In Saxon law. The estimation or valuation of the head; the price or value of a man, (*pretium hominis*.) By the laws of Athelstan, the life of every man, not excepting that of the king himself, was estimated at a certain price, which was called the *were*, or *æstimatio capitis*. *Crabb's Hist. E. L.* ch. 4. *Blount*.

*ÆTAS.* Lat. Age; full age. *Infra*

*ætatem*, (q. v.); under age. *Remanebit assisa usque ad ætatem omnium*; the assise shall stay until they are all of age. *Bract.* fol. 276 a. See *Parol demurrer*.

**ÆTAS INFANTILÆ PROXIMA.** In the civil law. The age next to infancy; the first half of the period of childhood, (*pueritia*), extending from seven years to ten and a half. *Inst.* 3. 20. 9. 4 *Bl. Com.* 22.

**ÆTAS PUBERTATI PROXIMA.** Lat. In the civil law. The age next to puberty; the last half of the period of childhood, (*pueritia*), extending from ten years and a half to fourteen. *Inst.* 3. 20. 9. 4 *Bl. Com.* 22.

**ÆTATE PROBANDA.** See *De ætate probanda*.

**ÆUE**, *Awe*, *Age*. L. Fr. Water. See *Æve*. *Æues*, *awes*; waters. *Kelham*.

**AFFAIRE**, (*A faire*.) L. Fr. To do, to make; to be had, made, done, or taken. *Kelham*. L. Fr. *Dict*.

**AFFECTIO.** Lat. Disposition, intention. *Affectio tua nomen imponit operi tuo*. Your disposition (or intention) gives name, (or character) to your work or act. *Bract.* fol. 2 b, 101 b. See *Actus*, *Affectus*.

**AFFECTUS.** Lat. Disposition, intention. *Ex affectu contrahentium*; from, or by the intent of the contracting parties. *Bract.* fol. 52 b. *Nec furtum committitur, nisi ex affectu furandi*; nor is theft committed unless from the disposition of stealing. *Id.* fol. 101 b. *Est in seysina per affectum et per aspectum*; he is in possession by intention, and by view. *Id.* fol. 225. *Oculis et affectu*; by the eyes and the intention. *Dig.* 41. 2. 1. 21. *Propter affectum* (q. v.); on account of disposition, favorable inclination or bias.

**AFFEER**, *Affere*. [L. Lat. *offerare*, from Fr. *offerer*, *affeurer*, or *afforer*, to tax, assess, or set a value upon a thing.] In old practice. To assess or tax; to fix, liquidate, or reduce to a precise sum; to moderate, mitigate or regulate.\* A term applied to the regulation of amercements, which were always inflicted in general terms, and signifying to reduce the general amercement to a certainty, or tax, moderate or mitigate it according to the particular circumstances of the offence and the offender. *Cowell*. *Blount*. *Spelman*, voc. *Afferatores*. 4 *Bl. Com.* 379, 380. *Hob.* 129 a.

*F. N. B.* 75 I. K. *Id.* 76 A. D. 8 Co. 77, [39, 40.] 1 *Salk.* 56. 3 *Id.* 33. The officers by whom this was done were called *affeerors*, and the assessment an *affeerment*, or *afferance*, (qq. v.) 4 *Bl. Com.* 379, 380. See *Amercement*.

**AFFEEREMENT**, *Affearment*. The assessment, liquidation, moderation or mitigation of an amercement. 4 *Bl. Com.* 379. 1 *Crabb's Real Prop.* 505, § 653.

**AFFEERORS.** [L. Lat. *offeratores*; L. Fr. *offirours*.] Persons chosen at courts leet and baron, and sworn to *affeer*, that is, assess and moderate amercements imposed on offenders. 4 *Bl. Com.* 380. 1 *Crabb's Real Prop.* 505, 506, §§ 653—655. In the superior courts of England, the coroners *affeer*ed the amercements. *F. N. B.* 76.

**AFFERATORES.** L. Lat. [from *offerare*, to *affeere*.] *Affeerors*. *Spelman*. See *Affeerors*.

**AFFERATUS**, *Afforatus*. L. Lat. [from *offerare*, to *affeere*.] *Affeer*ed, or assessed. *Cowell*, voc. *Afforatus*.

**AFFERE.** See *Affaire*.

**AFFERER**, *Affeurer*, *Afforer*. L. Fr. To tax, assess, regulate or proportion. *Spelman*, voc. *Afferatores*. *Kelham*.

**AFFERMER.** L. Fr. To let to farm. *L. Fr. Dict*.

To make sure, establish or confirm. See *Affirmer*.

**AFFIANCE.** Fr. and Eng. [L. Lat. *affidatio*, from *affidare*, to plight, or pledge.] The plighting of troth or faith between a man and a woman, upon an agreement of marriage to be had between them. *Litt.* sect. 39. *Co. Litt.* 34 a. See *Affidare*.

**AFFIANT.** A person making an affidavit. *Todd*, J., 9 *Wheaton's R.* 483. *Depo- nent*, (q. v.) is the more common word. See *Affidavit*.

**AFFIDARE.** L. Lat. [from *fides*, faith; *fidem dare*, to give or pledge faith.] In canon law. To plight one's faith, as on an engagement to marry; to betroth. *Postquam eam affidaverat, et cum qua postea publice contraxit*; after he had betrothed her, and with whom he afterwards publicly contracted marriage. *Bract.* fol. 29 a. *Co. Litt.* 34 a.

In feudal law. To give or swear fidelity,



or fealty, as a tenant or vassal to his lord. *Spelman*. See *Affidatio*, *Affidatus*.

In old practice. To pledge by oath; to swear to do a thing; simply to swear, or make oath; to *make faith*, as the Scotch phrase literally renders it. *Quorum quilibet affidabit quod de quolibet hundredo eliget, &c.*; each of whom shall swear that out of every hundred he will choose, &c. *Bract*. fol. 116 a. *Jurare*, (q. v.) occurs in this passage in the same sense. *Et ad hoc fideliter faciendum affidabunt amerciatores quod, &c.*; and to do this faithfully, the amercers shall swear, &c. *Id.* fol. 116 b. See *Id.* 337 b. 351 b. *Affidavit*; he swore, or pledged himself by oath. *Id.* 352 a. See *Affidavit*.

**AFFIDATIO.** L. Lat. [from *affidare*, q. v.] A plighting or pledging of faith; an *affiance*. *Spelman*, voc. *Affidare*.

A giving, or swearing of faith, fealty or fidelity. *Id.* *Bract*. fol. 88 a. *Affidatio dominorum*; an oath taken by the lords in parliament. *Blount*.

**AFFIDATUS.** L. Lat. [from *affidare*, q. v.] One who has given or sworn fealty or fidelity; a tenant by fealty. *Spelman*, (voc. *Affidare*.) distinguishes the *affidati* from vassals properly so called. *Affidata*; a woman affianced, or betrothed. *Cowell*.

**AFFIDAVIT.** L. Lat. [from *affidare*, q. v.] In practice. An oath in writing sworn before some judge or officer of a court, or other person legally authorized to administer such oath; a sworn statement in writing.\* To *make affidavit* of a thing is to testify it upon oath, in writing. 3 *Bl. Com.* 304.

The party making an affidavit is usually described as "the *deponent*," (sometimes, but rarely, "the *affiant*," (q. v.) and in making his statements is said to *depose*—"being duly sworn, deposes and says,")—but an affidavit is distinguished from a *deposition*, properly so called, by the circumstance that it is always made *ex parte*, and without any cross-examination. See *Deposition*, *Depose*, *Deponent*. The term *affidavit* is also applied, (though not with strict propriety,) to statements made on affirmation. Affidavits are most commonly used for certifying or proving the service of process, or other matters relating to the proceedings in a cause, or in support of, or opposition to *motions*, in cases where a court determines matters in a summary way. 3 *Bl. Com.* 304. 3 *Steph. Com.* 679. 1 *Tidd's Pract.* 491. *United States Digest*, Affidavit.

The term *affidavit*, now in daily use, is

the perfect tense of the old law Latin verb *affido*, *affidare*; and literally signifies "he has made oath," or "he has sworn." The original meaning of *affidare*, as applied to law proceedings, was to pledge by oath, to swear to do something, and is constantly used by Bracton in this sense. See *Affidare*. Thus, in the old law of *essoins*, the *essoiner* was required to *swear* that he would have his principal in court at a certain day, (*affidabit essoniator quod habebit dominum suum ad certum (aliud) diem*). *Bract*. fol. 337 b, 351 b. And if neither principal nor *essoiner* appeared at the day, the latter was allowed to excuse both by a new *essoin* that he could not come, nor have his principal, as he *swore to do*, (*sicut affidavit*), on account of misfortune, &c. *Id.* fol. 352 a. The word *affidaverunt* (they pledged themselves by oath) is used in an old concord made upon a writ of right, 33 Hen. II., cited by Lord Coke. 3 *Co. pref.* So, in a charter given at length by Blount, dated April 18, A. D. 1160, the words occur, "*juravi et affidavi*," I have sworn and pledged my oath (to keep the covenants contained in the instrument). *Blount*, voc. *Covenant*. By a gradual extension of meaning, the word *affidare* came to signify to swear generally, to swear to a thing already done, or to an existing fact, as well as to swear to do a thing in future. *Reg. Orig.* 29 b, *regula*. Hence the use of *affidavit*, in the third person of the past tense, as the emphatic word of the Latin forms in which oaths were recorded; from which the written oath of the present day has derived its name.

**AFFIERT**, *Affert*. L. Fr. It belongs, or behooves. *Ceo que a luy affiert*; that which belongs to him. *Litt. sect.* 44, 289, 294. *Afferont*; they belong. *L. Fr. Dict.*

**AFFILARE.** L. Lat. To file or affile. *Affiletur*; let it be filed. 8 *Co.* 319, [160.] *De recordo affilatum*; affiled of record. 2 *Ld. Raym.* 1476.

**AFFILE.** [L. Lat. *affilare*.] In old practice. To put on file. Now shortened to *file*, (q. v.)

**AFFILIATION.** [from Lat. *ad*, to, and *filius*, a child.] The assignment of a child to a parent by legal authority; the adjudging of a man to be the father of a bastard child. *Brande*. More commonly termed *filiation*, (q. v.)

**AFFINES**, *Adfines*. Lat. [pl. of *affinis*, (q. v.); L. Fr. *affins*.] In the civil law.

Relations or connexions by marriage. *Inst.* 1. 10. 6. 2 *Steph. Com.* 285.

**AFFINIS.** Lat. [from *ad*, at or near, and *finis*, a border; L. Fr. *affin*.] Bordering, or adjacent; near; related by marriage. See *Affines*, *Adfines*. There is no single English word corresponding to this. *Affined*, however, is sometimes used in translation. 1 *Kaufm. Mackeld. Civ. Law*, 141, § 134, note. *Id.* 142, § 135.

**Affais mei affais non est mihi affais.** One who is related by marriage to a person related to me by marriage, has no affinity to me. *Shelford Marr. & Div.* 174.

**AFFINITAS.** Lat. [from *affinis*, q. v.] In the civil law. Affinity; relation by marriage. *Inst.* 1. 10. 6. See *Affinity*, *Adfines*.

**AFFINITY.** [Lat. *affinitas*, q. v.] Alliance, nearness or relation by marriage. *Co. Litt.* 157 a. 1 *Bl. Com.* 434. The relationship which marriage occasions between the husband and the blood relations of the wife, and between the wife and the blood relations of the husband. *Tomlins. Holt-house*. The connexion which arises by marriage between each person of the married pair and the kindred of the other. 1 *Mackeld. Civ. Law*, 141, § 134. A husband is related by affinity to all the *consanguinei* of his wife, and *vice versa*, the wife to the husband's *consanguinei*; for the husband and wife being considered one flesh, those who are related to the one by blood are related to the other by affinity. *Gibbs. Cod.* 412. 1 *Chitt. Bl. Com.* 435, note. *Jewett, J.*, 1 *Denio*, 186, 187.

In a larger sense, consanguinity or kindred. *Co. Litt.* 157 a.

**AFFIRM.** [Lat. *affirmare*, to make firm; L. Fr. *affirmer*.] In practice. To ratify, or confirm a former law, or judgment. *Cowell. Blount*. Used in this sense by West, and Crompton. *West Symbol.* part 2, tit. Fines, sect. 152. *Crompt. Jurisd.* fol. 166. Now particularly applied to the confirmation, by a court of appeal, of the judgment of an inferior court; the opposite of *reverse*, (q. v.) To ratify or confirm a former act. See *Affirmance*.

To assert, or declare solemnly, instead of making oath. See *Affirmation*.

To aver, or state a thing in pleading; the opposite of *deny*, or *traverse*, (qq. v.) *Steph. Pl.* 84.

**AFFIRMANCE.** The confirming, or ratifying a former law, or judgment. *Cowell.*

*Blount*. Used in this sense, in the statute 8 Hen. VI., c. 12. *Id.* The confirmation of the judgment of a court by a superior court on appeal, or writ of error. See *Affirm*.

The confirmation, acknowledgment, or adoption of a former act; as the affirmance by a person of full age, of an act done during minority. 2 *Kent's Com.* 234—238.

**AFFIRMANT.** A person who affirms, in place of making oath. See *Affirmation*. Used in affidavits and depositions which are *affirmed*, instead of sworn to, in place of the word *deponent*.

**AFFIRMARE.** Lat. and L. Lat. To make firm, confirm, or ratify. See *Affirm*.

To aver, or state a thing, in pleading.

**Affirmanti, non neganti incumbit probatio.** The proof lies upon him who affirms, not upon him who denies.\* *Steph. Pl.* 84.

To farm out, (*ad firmam dare*; L. Fr. *affermer*.) *Affirmatus*; farmed out; let for a firm, farm or rent. *Cowell, voc. Firmaratio*. See *Firma*, *Farm*.

**AFFIRMATION.** In practice. A solemn declaration made before a court, judge, or other authorized officer; an indulgence allowed by law to persons professing to have conscientious scruples against taking an oath, who, in cases where an oath is required from others, may make a solemn *affirmation* or declaration that what they say is true.\* *Tomlins. Jacob*.

**AFFIRROUR.** L. Fr. An affeeror. See *Affeeror*.

**AFFIXUS, Adfixus.** Lat. [from *ad*, to, and *fixus*, fixed.] In the civil law. Affixed, fixed or fastened to. *Statue affixæ basibus structilibus, aut tabulæ religatæ catenis, aut erga parietem adfixæ, aut si similiter coherent lychni, non sunt ædium*; *ornatus enim ædium causa parantur, non quo ædes perficiantur*; statues fastened upon pedestals of masonry, or pictures fastened with chains or fixed to the wall, or lamps suspended in a similar way, are no part of the house; for they are put up for the sake of ornament, and not for the completion of the building. *Dig.* 50. 16. 245. See *Fixtures*.

**AFFORCE, Aforce.** [L. Fr. *afforcer*; L. Lat. *afforciare*.] In old English law. To apply, or exercise force; to use compulsory measures; to add to, or increase. *Afforcing an assise* was the production of a verdict, in case of a difference of opinion among the jurors, by adding others

till twelve were found who were unanimous.\* *Bract.* fol. 185 b. 292. 2 *Reeves' Hist. E. L.* 267.

**AFFORCER**, *Aforcer*. L. Fr. To strengthen; to add to, or increase; to compel, or enforce. *Kelham*.

**AFFORCIAMENTUM**. L. Lat. [from *afforciare*, to make strong.] A fortress or stronghold, or other fortification. *Cowell*.

The calling of a court upon a solemn, or extraordinary occasion. *Id.* See *Aforciam-mentum*.

**AFFORCIARE**, *Affortiare*. L. Lat. To make strong, to use or apply strength or force; to add to, or increase. *Affortietur assisa*; the assise shall be afforded. *Bract.* fol. 185 b. See *Afforce*.

**AFFORER**. L. Fr. To estimate, assess, or tax. See *Afferer*.

**AFFOREST**. [L. Lat. *afforestare*.] To turn into a forest, (in *forestam convertere*.) *Spelman*, voc. *Afforestare*.

**AFFRANCHIR**. L. Fr. To set free. *Kelham*.

**AFFRAY**. [L. Lat. *affraia*, from Fr. *affraier*, *effrayer*, to affright.] In criminal law. The fighting of two or more persons in some public place, to the terror of others; and there must be a stroke given, or offered, or weapon drawn, otherwise it is not an affray. 3 *Inst.* 158. 4 *Bl. Com.* 145. The fighting must be in public, for if it be in private, it is no affray, but an assault. *Id. ibid. Hawk. P. C. b. 1, c. 63, sec. 1.* 4 *Steph. Com.* 276.

**AFFRECTAMENTUM**, *Affretamentum*. L. Lat. [from Fr. *fret*, freight.] An affreightment, or freightment. *Rast. Entr.* 24. *Pat. 11 Hen. IV.*, cited in *Cowell*.

**AFFRECTATUS**. L. Lat. Freighted. *Rast. Entr.* 409. *Towns. Pl.* 50.

**AFFREIGHTMENT**. [L. Lat. *affrectamentum*, q. v.] In maritime law. The freighting or affreighting of a ship; that is, the hiring and letting to hire of a vessel for the conveyance of goods on a certain voyage, at a stipulated price or freight.\* A charter party is called a contract of affreightment. 3 *Kent's Com.* 201. *Smith's Merc. Law*, 172. See *Charter party*, *Freight*.

**AFFRI**, *Afri*, *Affa*. L. Lat. [probably

the same with L. Lat. *averia*, Fr. *avers*, *af-fers*.] Plough cattle, bullocks or plough horses. *Afri*, or *afri carucae*; beasts of the plough. *Reg. Orig.* 150 a. *Stat. Westm.* 2, c. 18. *Spelman*. See *Averia*.

**AFORCIAMENTUM**. L. Lat. In old English law. An afforcement; a strengthening, adding to; increase. *Aforciam-entum plegiorum*; aforcement of pledges. If a defendant did not appear after the first attachment, then upon the plaintiff offering himself, he was to be attached by better pledges, to answer on another day. This was called *aforciam-entum plegiorum*. *Bract.* fol. 439 b. 1 *Reeves' Hist. E. L.* 482. *Aforciam-entum districtionis*; aforcement of a distress. *Bract.* fol. 330. *Aforciam-entum curiae*. *Id.* fol. 35.

**AFORESAID**. [L. Lat. *prædictus*, *præfatus*, *præcitus*.] Before, or already said, mentioned, or recited; pre-mised. *Plowd.* 67. *Foresaid* is used in Scotch law. See *Prædictus*, *Præfatus*.

**AFORETHOUGHT**. In criminal law. Premeditated. See *Malice aforethought*.

**AFTERMATH**. The grass which grows after the hay has been made; the second mowing or crop of hay. 2 *Wooddes. Lect.* 61.

The right to the last crop, or pasturage. 1 *Chitt. Gen. Pr.* 181.

**AGAIT**, *Agayte*. L. Fr. Waiting, await, wait. *Gist en agait*; he lies in wait. *L. Fr. Dict. Kelham*.

**AGARD**. L. Fr. [from *agarder*, q. v.; L. Lat. *awarda*.] An award. *Nul fait agard*; no award made. See *Award*.

**AGARDER**. L. Fr. To award, ad-judge, determine. *Si come la court agardre*; as the court shall award. *Stat. Westm.* 1, c. 44. *Le breve fuit agard bon*; the writ was held good. *Reg. Orig.* 97 b, nota.

**AGE**, *Ave*, *Aive*. L. Fr. Water. *Kelham*.

**AGE**. [L. Fr. *agé*, L. Lat. *ætas*.] A period of life at which persons become legally competent to do certain acts, or enter into certain contracts, which before they were incompetent to do, or enter into.\* The term is emphatically applied in the common law, to the period of twenty-one years in males and females, (called *full age*; Lat. *plena ætas*, Fr. *pleine âge*;) on arriving at which they are said to be of age, and previously to be *under age*, (Lat. *infra ætatem*;

Fr. *deins agé*.) that is, infants or minors. *Stat. Westm.* 1, c. 22. *Litt.* sect. 103, 104. *Co. Litt.* 78 b. 1 *Bl. Com.* 463. 2 *Kent's Com.* 233. See *Ætas*, *Full age*.

Besides full age, there are other periods at which males and females become of age for different purposes, such as the *age of consent* to marriage, which is fourteen years in males and twelve in females; the *age of discretion*, which is fourteen in both sexes, at which they may choose their guardians; *age to make a will* of personal estate, which at common law was fourteen in males and twelve in females; *age to be an executor* or executrix, which was seventeen years. 1 *Bl. Com.* 463. *Co. Litt.* 78 b, 79 a. *Hargr. Co. Litt.* note 83, lib. 2. 2 *Steph. Com.* 332. 2 *Kent's Com.* 78, 222, 242. There is also, in English law, the age at which males may take the oath of allegiance, which is twelve years; the age at which females may be given in marriage, which is seven, and the age at which they become entitled to dower, which is nine years. 1 *Bl. Com.* 463. See 2 *Steph. Com.* 332. As to the age of responsibility for criminal acts, see 4 *Bl. Com.* 22, 23. 2 *Steph. Com.* 331. *Macpherson on Infants*, 450.

AGE PRAYER. [L. Fr. *age prier*; L. Lat. *atatis precatio*.] In old English practice. A prayer for age; or for the allowance of a privilege or indulgence, on account of age.\* At common law, in many real actions by or against an infant, and in actions of debt against him, as heir to any deceased ancestor, either party might suggest the non-age of the defendant, and *pray* that the proceedings might be deferred until his full age, or (in legal phrase) that the infant might *have his age*, and that the *parol* might *demur*, that is, that the pleadings might be stayed. 3 *Bl. Com.* 300. *Termes de la ley*. *Finch, Law*, 360. This was called the plea of *parol demurrer*, which has been recently abolished. *Stat.* 11 *Geo. IV.*, and 1 *Will. IV.*, c. 37, s. 10. See *Parol, Parol demurrer*.

AGENCY. [Lat. *procuratio*.] The relation or office of an agent;\* the relation between principal and agent. *Story on Agency*, § 3. The administration or management of the business of another person in his behalf, and by his appointment or authority. See *Procuratio*.

Agency is founded upon a contract, either express or implied, by which one of the parties confides to the other the management of some business to be transacted in his name, or on his account, and by which the other assumes to do the business, and to

render an account of it. 2 *Kent's Com.* 613. See *Agent*.

AGENFRIDA. Sax. The true master or owner of a thing. *Spelman*.

AGENEHINE, *Avenhine*, *Awnhine*. Sax. [from *agen*, own, and *hine*, a servant.] In Saxon law. A domestic or inmate; one belonging to the family or household. *Frum night uncuth*,\* *twanight gest*, *thrid night* agenhine; first night a stranger, second night a guest, third night an inmate. *LL. Edw. Conf.* c. 17. Sometimes written *hogenhine*, *hoghenehyne*, and *homehyne*. (qq. v.)

AGENS. Lat. [from *agere*, q. v.] One who acts or does an act; in the civil law, a plaintiff. *Inst.* 4. 6. 33. Hence the English *agent*. *Agentes et consentientes pari poena plectentur*; those who do an act, and those who consent to it, shall suffer the same punishment. 5 *Co.* 80.

AGENT. [from Lat. *agens*, acting, one who acts, from *agere*, to act or do: Lat. *procurator*, *vicarius*.] One who acts for another; one who is employed by another to do any act for his benefit, or on his account.\* *Story on Agency*, § 3. A person who acts in the name and place of another, (who is called his principal,) by his authority or appointment, as his substitute, deputy, proxy, attorney, factor, &c. Agent is a *nomen generalissimum*, and includes factors and brokers, who are only a special class of agents. 2 *Kent's Com.* 622, note. See *Paley on Agency*. *United States Digest*, Principal and Agent.

AGENT AND PATIENT. In old law. Agent and subject; doer and receiver.\* Where the same person was the doer of a thing, and the party to whom it was done, he was termed *agent and patient*; as where an executor retained out of the goods of the deceased in his hands, the amount of a debt due to himself, he being both the party to whom the debt was due and the party paying it.\* *Termes de la ley*.

AGER. Lat. A field; open country. *Ager est locus qui sine villa est*. *Dig.* 50. 16. 27.

Land generally. *Bract.* fol. 9. *Sic enim debere quem meliorem agrum suum facere, ne vicini deteriorem faciat*; every one ought so to improve his own land as not to injure his neighbor's. 3 *Kent's Com.* 441.

AGER. L. Lat. An acre. *Spelman*. See *Acra*, *Acre*.

**AGERE.** Lat. To act, to do. *Dig.* 50. 16. 19.

To act at law, or by, or through the law; (*agere lege*;) to deal with one at law; to bring an action; to sue. *Agere potest*; he can sue. *Inst.* 2. 20. 6. *Agere non potest*; he cannot sue. *Id. ibid.* *Id.* 4. 10. pr. *Si agat quis*; if a man bring an action. *Id.* 4. 6. 2. *Agitur*; a suit is brought, or may be brought. *Id.* 4. 6. 22, 25. *Agere injuriarum*; to sue for damages. *Id.* 4. 4. 2. *Ad hoc agere*; to bring an action for this object. *Bract.* fol. 18 a. *Si agat de conventionem*; if he bring an action of covenant. *Id.* fol. 24 b.

**AGGER.** Lat. A dam, bank or mound. *Towns.* Pl. 48.

**AGGREGATE.** [Lat. *aggregatus*, from *ad*, to, and *grez*, a company or multitude.] Composed of several; consisting of many persons united together. 1 *Bl. Com.* 469. See *Corporation*.

**AGILD.** Sax. [from *a*, without, and *gild*, a payment.] In Saxon law. Free from penalty, (*sine mulcta vel compensatione*;) not subject to the payment of *gild*, or *weregild*, that is, the customary fine or pecuniary compensation for an offence. *Spelman.* *Cowell.* See *Gild*, *Weregild*.

**AGILLARIUS.** L. Lat. A hayward, herdward, or keeper of cattle in a common field. *Cowell.*

**AGISER.** L. Fr. To lie. *Agisant*; lying. *L. Fr. Dict.*

**AGIST.** [L. Lat. *agistare*; from *ad*, to, and Norm. *gister*, or *gisser*, to lie or lay.] To put, place, or lay to, or near, (*adjicere*, *apponere*, *rem juxta aliam collocare*;) to adjust, (Fr. *adjouster*), or apportion. To assign, apportion or fix the number of cattle entitled to feed on certain ground; to adjust, apportion or assess a tax. This appears to have been the original sense of the word. *Spelman.* *Cowell.* *Agistare*.

In ancient law. To take in and feed the cattle of strangers in the king's forest, and to collect the money due for the same to the king's use. *Charta de Foresta*, c. 9. *Spelman.* *ub. sup.* *Cowell.*

In modern law. To take in cattle to feed, or pasture, at a certain rate or compensation. *Jacob.* *Agistment.* See *Agistare*, *Agistatio*.

**AGISTAMENTUM.** L. Lat. [from *agistare*, q. v.] An agistment, apportionment,

or feeding of cattle. *Spelman.* *Agistare.* *Termes de la ley.*

A duty or tax for repairing banks, dykes or sea walls, levied upon the owners of lands benefitted by them. *Spelman.* *Cowell.* *Agistator.*

**AGISTARE.** L. Lat. [from *ad*, to, and Norm. *gister*, to lie, lay or place.] To adjust, assign, apportion, assess; to assign or apportion cattle, or other animals, to a feeding ground. *Unusquisque liber homo agistet boscum suum in foresta pro voluntate sua*; every freeman shall agist his wood in the forest at his pleasure. *Chart. forest.* c. 9. *Spelman.* To adjust or assess a tax, or duty. *Id.*

To feed or pasture cattle; to feed other animals; to agist. *Ducere possit porcos suos per dominicum boscum nostrum liberè*,—*ad agistandum eos in boscis suis propriis, vel alibi*; he may take his swine through our demesne wood freely,—to agist them in his own woods, or elsewhere. *Chart. forest.* c. 9. See *Agist*.

**AGISTATIO.** L. Lat. [from *agistare*, q. v.] The laying or assessing a proportion of duty upon lands, for repairing sea banks and walls. *Cowell.*

**AGISTATOR.** [L. Lat. from *agistare*, q. v.] An officer of the forest who took account of cattle there agisted; sometimes called *gyst-taker* or *guest-taker*. *Cowell.* *Crompt. Jur.* fol. 146. 4 *Inst.* 293.

A collector and expender of taxes for keeping sea-walls in repair. *Kennett's Gloss.*

An agister, (q. v.)

**AGISTER, Agistor.** [L. Lat. *agistor*.] One who agists or takes in cattle and horses to pasture at a certain rate. *Story on Bailment*, § 443. See *Agist*, *Agistment*.

**AGISTMENT.** [L. Lat. *agistamentum*.] The taking in of horses, or other cattle, to graze and depasture in one's grounds at a certain rate. 2 *Bl. Com.* 452. See *Agist*. Called anciently *gisement*. *Cowell.*

**AGIUM.** L. Lat. [from *agere*, q. v.] A termination in the composition of Latin words, answering to the termination *age*, in English, signifying service or duty: as *homagium*, (*servitium hominis*), the service of a man; *escuagium*, (*servitium scuti*), the service of the shield; *socagium*, (*servitium socæ*), the service of the plough, and the like. *Co. Litt.* 86 B. *Spelman.* *Agipenagium*.

**AGNASCOR**, *Agnasci*. Lat. [from *ad*, to, and *nascor*, *nasci*, to be born.] In the civil law. To be born to one; to have issue after making a will. *Constat agnascendo rumpi testamentum*; it is clear that a will is revoked by the birth of a child. *Cic. de Orat.* i. 57.

**AGNATES**, *Agnats*. [Lat. *agnati*.] In the law of descents. Relations by the father. These words are used in the Scotch law, and by some writers, as English words, corresponding with the Latin *agnati*, (q. v.) *Ersk. Inst.* b. 1, tit. 7, § 4. 3 *Gibbon's Rom. Emp.* 175, 177, (Am. ed.) *Agnates* include the following relations: father, son, brother, daughter, sister, father's brother, brother's son, &c. 1 *Kaufm. Mackeld. Civ. Law*, 137, note.

**AGNATI**, *Adgnati*. Lat. In the civil law. Relations by the father; relations through males; translated in Scotch law, and sometimes by English writers, *agnates* or *agnats*, (q. v.) 2 *Bl. Com.* 235. *Sunt agnati cognati per virilis sexus cognationem conjuncti, quasi a patre cognati*; *agnati* are relations connected by a relationship of the male sex, as it were related by the father. *Inst.* 1. 15. 1. *Id.* 3. 2. 1. See *Cognati*.

**AGNATIC**. [from *agnati*, q. v.] Derived from, or through males. 2 *Bl. Com.* 236.

**AGNATIO**. Lat. [from *agnati*, q. v.] In the civil law. Relationship on the father's side; agnation. *Agnatio a patre est*. *Inst.* 3. 5. 4. *Id.* 3. 6. 6.

Birth, especially after a will; an additional birth. See *Agnascor*. [*Testamentum*] *agnatione posthumi sive posthumæ rumpitur*; a will is annulled by the birth of a posthumous son or daughter. *Inst.* 2. 13. 1.

**AGNISER**. L. Fr. To acknowledge. *Agnise, agnize*; acknowledged. *L. Fr. Dict.*

**AGNOMEN**. Lat. In the Roman law. The last of the four names used among the Romans; the other three being the *prænomen*, the *nomen*, and the *cognomen*; a name assumed or added from some particular circumstance; a surname. *Inst.* 2. 20. 29. *Cooper's Notes*, in loco.

**AGREEMENTUM**, *Agreementum*. L. Lat. An agreement. *Spelman*.

This Latin form of the word *agreement* has led to the fanciful etymology adopted by Plowden, Cowell, and other writers, which makes it to be compounded of *ag-*

*gregatio* and *mentium*, and so to signify a joining together of two or more minds in any thing done, or to be done. *Cowell*, voc. *Agreement*. *Plowd.* 17, arg. The error of this obviously consists in confounding *mentium*, a common termination, used (as the English and French *ment*;) in forming nouns from verbs, with *mentium*, the genitive plural of *mens*, mind, and is well exposed by *Spelman*. The phrase *aggregatio mentium*, however, though absurd in point of etymology, is expressive as a definition, and in that light has sometimes been adopted by high authority. *Com. Dig. Agreement*, A. 1. 3 *Johns. R.* 535. See *Testamentum*.

**AGREARE**. L. Lat. To agree. *Agreavit*; he agreed. *Convenit, promisit, et agreavit ad et cum*, &c.; he covenanted, promised and agreed to, and with, &c. *Hob.* 34 b. *Corrupte agreatum fuit*; it was corruptly agreed. 2 *Stra.* 871.

**AGREE**. [L. Lat. *agreare*; from Fr. *aggreer*, from Lat. *aggređi*, to go or come to.] To come together, unite or concur, (*congređi*;) to be of one mind as to a thing (*ire in eandem sententiam*;) to assent mutually, or contract to do a thing. To *agree*, in this its proper sense, implies action by and between two or more; and the same idea of *united* or *mutual* action is the radical one of the corresponding Latin words *convenire*, *concordare*, and *contrahere*. The word *agreed* in a written contract is regarded as the word of both parties. *Nelson, C. J.*, 5 *Hill's N. Y. Rep.* 256, 259. See *Agreement*.

To assent to a thing, or undertake to do it; to promise. *Jewett, J.*, 1 *Denio's R.* 226, 228, 229. This is a loose and incorrect sense of the term. *Lord Ellenborough, C. J.*, 5 *East*, 10.

To concur or acquiesce in; to approve or adopt. *Agreed, agreed to*, are frequently used in the books, (like *accord*;) to show the concurrence or harmony of cases. *Agreed per curiam* is a common expression.

To harmonize or reconcile. "You will agree your books." 8 *Co.* 67.

**AGREEMENT**. [L. Lat. *agreementum*, *concordia*; Lat. *conventio*, *pactum*.] A coming together of parties in opinion or determination\*; the union of two or more minds in a thing done, or to be done; a mutual assent to do a thing. *Com. Dig. Agreement*, A. 1. *Plowd.* 5 a, 6 a.—The consent of two or more persons concurring, the one in parting with, and the other in receiving some property, right or benefit. *Bac. Abr. Agreement*.—A mutual contract on consi-

deration, between two or more parties. Lord Ellenborough, C. J., 5 *East*, 10.—A mutual consent of the minds of the parties concerned, respecting some property or right that is the object of the stipulation, or something that is to be done or forborne; a transaction between two or more persons, in which each party comes under an obligation to the other, and each reciprocally acquires a right to whatever is promised or stipulated by the other. 4 *Gill. & Johns*. 1. See *Plowd.* 17. See *Agree*.

A promise, or undertaking. This is a loose and incorrect sense of the word. Lord Ellenborough, C. J., 5 *East*, 10. See 3 *Br. & Bing.* 14.

A thing or matter agreed to, or upon; an instrument showing what has been agreed upon.

Agreement is constantly used as the synonyme of contract. 2 *Steph. Com.* 108, 109. See *Contract*. There seems, however, to be a shade of difference between the terms; agreement being applicable to less formal acts or instruments. See *Bac. Abr. Agreement*, note.

AID, *Ayde*. [from Fr. *aide*; Lat. *auxilium*, *adjutorium*, *subsidiium*.] In feudal law. A kind of pecuniary tribute paid by a vassal to his lord, on occasions of peculiar emergency, and which was one of the incidents of tenure in chivalry, or by knight's service. Aids were principally of three kinds: to ransom the lord's person, if taken prisoner; to make his eldest son a knight, (*pur faire l'eigne fitz chivaler*;) and to marry his eldest daughter, (*pur l'eigne file marier*.) 2 *Bl. Com.* 63, 64. *Stat. Westm.* 1, c. 36. *Spelman*, voc. *Auxilium*. 2 *Reeves' Hist. E. L.* 111. 3 *Kent's Com.* 504. See *Auxilium*.

In English law. A subsidy granted to the king. *Stat.* 14 *Edw. III.* st. 2, c. 1. *Cowell*.

In old pleading. Help or assistance in defending an action. See *Aid Prayer*.

In criminal law. Assistance given to the commission of a crime. *Stat. Westm.* 1, c. 14. Aid in this sense, according to Lord Coke, comprehends all persons counselling, abetting, plotting, assenting, consenting and encouraging to do an act, and who are not present when the act is done. 2 *Inst.* 182. See *Aider*, *Aiding*.

To AID. To help or assist. See *Aid*, *Abet*.

To remedy or cure. An error, defect or omission in pleading is sometimes aided by the adverse party taking no notice of it, or by verdict. 1 *Saund.* 228, note (1). See *To cure*.

AID-PRAYER, *Ayd-pryer*. [L. Fr. *aide-prier*; L. Lat. *auxilii petitio*.] In old practice and pleading. A prayer in aid, or for aid; a prayer or petition to the court, by a tenant in real actions, for the aid of another person interested in the property demanded, to help him defend the action.\* Thus, a tenant for life might, at common law, pray in aid of him that had the inheritance in remainder or reversion; that is, that he might be joined in the action, and help to defend the title. 3 *Bl. Com.* 300. *Cowell*, voc. *Aid*. Aid-prayer was a dilatory plea, to which the demandant might counterplead, and thereupon issue would be joined as in ordinary cases. 1 *Roscoe Real Act.* 275—281.

AIDER, *Aidre*. L. Fr. To aid, help or assist. *Ci Dieu vous aide*; so help you God. *Reg. Orig.* 302 b. 303.

AIDER. In criminal law. One who aids or promotes the commission of a crime; an accessory before or at the fact; a principal in the second degree.\* 1 *Russell on Crimes*, 26. Used generally in connexion with the word *abettor*, and considered by some writers as synonymous with it. See *Abet*, *Abettor*.

AIDING AND ABETTING. In criminal law. A phrase applied in the common law to aiders and abettors, technically so called. 1 *Russell on Crimes*, 26. See *Abet*. Construed, in the act of Congress, 20th April, 1818, ch. 373, to import as in common parlance, assistance, co-operation and encouragement. 12 *Wheaton's R.* 460.

AIE. L. Fr. Have. *Jeo aie*; I have. *L. Fr. Dict.*

AIEL, *Aieul*, *Aile*, *Ayle*. L. Fr. A grandfather. *F. N. B.* 221, in marg.

AIEL, *Ayel*, *Aile*, *Ayle*. In old practice. A writ which lay for an heir to recover the possession of lands on the seisin of his grandfather, (*aiel* or *aieul*.)\* Called by Roscoe a possessory ancestral writ. 1 *Roscoe Real Act.* 127. *Ayle* is the most common form of this word, and is used by Blackstone. 3 *Bl. Com.* 186. See *Ayle*.

AILOURS, *Aylours*, *Ailors*. L. Fr. Elsewhere, otherwise. *Artic. sup. chart.* c. 3. *L. Fr. Dict.*

AINSI. L. Fr. Thus, so; even so; after the same manner; so that; unless.

*Ainsi come* ; even as it were. *Ainsi soit il* ; so be it. *L. Fr. Dict.*

AIRER, *Aerer*. L. Fr. To plough. See *Arer*.

AISIAMENTUM, *Aysiamentum*, *Esa-mentum*. L. Lat. [from Fr. *aisé*, convenience.] An easement or privilege. *Glanv. lib. 12, c. 14. Reg. Orig. 165 b. Spelman.*

AISNE, *Eigne*. L. Fr. [quasi *ainsné* ; first born.] Eldest, or first born. *Aisne fitz* ; eldest son. *Aisne file* ; eldest daughter. *L. Fr. Dict. Ainznez* ; eldest. *Kelham. Aisne* is the opposite of *puisne* (q. v.). *Spelman, voc. Aesnecia.*

AISNEESSE, *Aisnesse*. L. Fr. [L. Lat. *aesnecia*, q. v.] The right or privilege of the eldest, or first born ; esnecy, (q. v.) *Spelman, voc. Aesnecia. Kelham* gives *ainneesche* as another form.

AIT. L. Fr. He has. *Aiet* ; he shall have. *L. Fr. Dict.*

AJANT, *Ayant*. L. Fr. Having. *Ajants, aienz* ; having. *Kelham.*

AJOURNER. Fr. To summon. *Ou n'ajournoit point par pairs, car les pairs ne pouvoient ajourner leur seigneur ; mais ils pouvoient ajourner pour leur seigneur* ; he could not summon by the peers, for the peers could not summon their lord ; but they might summon for their lord. *Esprit des Lois, liv. 28, c. 28.*

To adjourn, in the modern sense. *Britt. c. 2. See Adjourn.*

AL. L. Fr. At. *Al huis d'esglise* ; at the door of the church. *Litt. sect. 38.*

To. *Cestui que doit inheriter al pere doit inheriter al fitz* ; he who would have been heir to the father of the deceased shall also be heir to the son. 2 *Bl. Com. 223, 229, 250.*

ALA. L. Fr. [from *aler*, q. v.] Goes, gone. *L. Fr. Dict.*

ALANT. L. Fr. [from *aler*, q. v.] Going. *Litt. sect. 240.*

ALAST. L. Fr. [from *aler*, q. v.] Goes, went, gone. *L. Fr. Dict.*

ALBA. L. Lat. [from *albus*, white.] An alb, or aub ; a white vestment worn by priests. *Spelman. Reg. Orig. 59 b.*

ALBA FIRMA. L. Lat. [L. Fr. *blanche ferme*.] White farm, or rent ; blanch farm. Rent payable in silver, or white money, (*argento quasi censu albo*.) as distinguished from that which was anciently paid in corn or provisions, (*in annona*.) called black mail, or black rent, (*censu vel firma nigra*.) *Spelman. Reg. Orig. 319 b.* To hold by white farm is to hold freely in socage. 2 *Inst. 44. See Firma, Farm, Blanch ferme.*

ALBANAGIUM. See *Albinatus*.

ALBANUS, *Albinus*. L. Lat. [quasi *alibinus*, *alibi natus*, born elsewhere or in another country ; Fr. *aubaine*.] In old French law. A stranger, alien or foreigner ; (Lat. *advena, extraneus* ; old English, a comingling.) *De liberis hominibus albanisque* ; from freemen and strangers. *Spelman. Bona albana* ; the goods of a foreigner, which escheated to the prince or lord. *Id. See Aubaine.*

ALBINATUS, *Albanagium*. L. Lat. [from *albanus*, or *albinus*, q. v.] The state or condition of an alien or foreigner. See *infra*.

ALBINATUS JUS, *Albanagii jus*. L. Lat. [Fr. *droit d'aubaine* or *d'aubénage*.] A right and privilege which formerly existed in France, entitling the king, on the death of an alien, to all he was worth, unless he had a peculiar exemption. *Spelman, voc. Albanus. 1 Bl. Com. 372. 2 Kent's Com. 69. Rex omnia eorum bona occupat, jure albanagii : exclusa omni parentela, conjuge, et quocunque alio legitimo successore* ; the king takes possession of all their goods by right of albanage, excluding all right of kindred, the wife, and every other lawful successor. *Benedict. in cap. Raynutius, num. 1042, cited in Spelman, voc. Albanus. See Aubaine, Droit d'aubaine.*

ALBUM, *Albus*. Lat. White, blank, not written upon. *Album breve* ; a blank writ ; a writ with a blank or omission in it, as where it is returned with the sheriff's surname omitted to the return. *Hob. 113 b, 130. Yelv. 110.*

Blank, plain or smooth, without mark. *Album argentum* ; plain silver, without mark or stamp, uncoined. White money. See *Alba firma*.

ALCALDE. In Spanish law. A magistrate or judge. 12 *Peters' R. 442, note. 1 White's Recopilacion, 419.*



**ALDERMAN.** [Sax. *ealdorman*, L. Lat. *aldermannus*.] A member of the corporation or common council of a city or corporate town, elected by, and representing the inhabitants of a ward, and having authority to act as a civil magistrate, and sometimes as a judge.\* See *Aldermannus civitatis*.

The use of the term *alderman* as an official title may be traced back to the time of the Anglo Saxons. *LL. Edw. Conf.* c. 35. The word itself is derived from the Saxon *ealdorman* or *ealdorman*, compounded of Sax. *ealder*, (Gr. *ἡγεστειρος*, Lat. *senior*), and *man*; literally, an elder man. The word *ealder* was also used as a substantive, like the modern *elder*, and was sometimes employed as synonymous with *ealdorman*, but it was generally used as descriptive of age, rather than office. *Spelman. Ealdorman*, (*aldermannus*), on the other hand, was employed to denote office or rank, and not age. *Vocabantur aldermanni, non propter aetatem, sed propter sapientiam et dignitatem, cum quidem adolescentes essent, juris periti tamen, et super hoc experti*; they were called aldermen, not on account of their age, but on account of their wisdom and dignity; for they might be young men, provided they were skilled in the law, and possessed of the requisite experience. *LL. Edw. Conf.* c. 35. *Co. Litt.* 168 a. See *Ealdorman*. The title however was not used to designate any particular office, but was applied to officers of various grades, from the highest to the lowest. It was used in the first place, in a general sense, to denote any superior officer or magistrate, (*pro seniore vel superiori in quavis praefectura*), and in this sense was applied to a prince, archbishop, bishop, duke and earl. *Spelman*. It was also used in a stricter sense to denote certain particular officers or magistrates of both general and limited jurisdiction, such as the alderman of all England, (*aldermannus totius Angliæ*;) the king's alderman, (*aldermannus regis*;) the alderman of a county, (*aldermannus comitatus*;) of a city, (*civitatis*;) of a borough, (*burgi*;) of a castle, (*castelli*;) and of a hundred or wapentake, (*hundredi sive wapentachii*.) *Id.* See *infra*.

**ALDERMANNUS.** L. Lat. An alderman. *Spelman. Chart. Civit. London*, 22 Nov. 50 *Edw. III.* *Consilarii alias aldermanni*; counsellors, otherwise aldermen. *T. Raym.* 435.

**ALDERMANNUS TOTIUS ANGLIÆ.** L. Lat. Alderman of all England. An officer among the Anglo Saxons, supposed by *Spelman* to

be the same with the chief justiciary of England in later times. *Spelman, voc. Aldermannus*. See *Capitalis justitiarius*.

**ALDERMANNUS REGIS.** L. Lat. [Sax. *cyninges ealdorman*.] The king's alderman. A high judicial officer among the Anglo Saxons, supposed by *Spelman* not to have had a permanent authority, but to have acted under an occasional commission from the king, (*per occasionem delegatus*), to administer justice in particular districts, like the *missus dominicus*, (q. v.) of the old continental law, or the modern justice of assize. *Spelman, voc. Aldermannus*.

**ALDERMANNUS COMITATUS.** L. Lat. Alderman of the county. An officer of high distinction among the Saxons, supposed by most writers to be the same with the earl, *eorle*, (*comes*), or schireman, (qq. v.) *Bl. Com.* 116. *Co. Litt.* 168 a. *Gill. G. Pleas*, Introd. 1 *Reeves' Hist. E. L.* 6, 7. 1 *Spence's Chancery*, 58, 59. *Spelman* inclines to the opinion that he occupied a middle rank between the earl and viscount. He presided in the county court, or schiremote, the bishop sitting with him as an associate. *Spelman, voc. Aldermannus*. See *Comes, Earl*.

**ALDERMANNUS CIVITATIS VEL BURGI.** L. Lat. Alderman of a city or borough, from which the modern office of alderman has been derived. *T. Raym.* 435, 437. London appears to have had aldermen from time immemorial. *Palgrave Rise, &c.* ccl. 1 *Spence's Chancery*, 56, note. According to *Spelman*, there were no distinct officers of this rank before the reign of Richard I. *Spelman, voc. Aldermannus*.

**ALDERMANNUS HUNDREDI SEU WAPENTACHII.** L. Lat. Alderman of a hundred or wapentake. *Spelman, voc. Aldermannus*.

**ALDERMANRIA.** L. Lat. Aldermanry, aldermanship; the office of an alderman. *Chart. Civit. London*, 22 Nov. 50 *Edw. III.*

**ALE.** L. Fr. Gone. See *Aler*.

**ALE CONNER.** [L. Lat. *gustator cer-visiæ*.] An ale taster; an officer anciently appointed in every court leet, and sworn to examine and assay the beer and ale, and to take care that they were good and wholesome, and sold at proper prices, according to the assize.\* *Termes de la ley. Cowell*. Ale tasters are still annually chosen and sworn in many parts of England, in compliance with charters or ancient customs,

though the duties of the office are fallen into disuse. *P. Cyclopaedia*, voc. *Ale*. 1 *Crabb's Real Prop.* 501, § 647. The ale conners in London are inspectors of measures in public houses. *Wharton's Lex.* The same title was given to officers who examined and weighed loaves of bread, to see whether they were of due weight. 1 *Wils.* 248. See *Assize*.

**ALEATORY CONTRACT.** [Fr. *contrat aléatoire*; from Lat. *alea*, hazard.] In the civil law. A mutual agreement, the effects of which, with respect both to the advantages and losses, whether to all the parties or to one or more of them, depend on an uncertain event. *Civil code of Louisiana*, art. 2951. See *Wager*.

**ALEGER.** L. Fr. To relieve, ease, redress. *●Alegge*; relieved, eased, redressed. *Kelham*.

**ALER.** L. Fr. To go. *Alera*; he shall go. *Litt.* sect. 201. *Alant*; going. *Id.* sect. 240. *Ale*; gone. *Id.* sect. 455.

**ALER SANS JOUR.** L. Fr. [L. Lat. *ire sine die*.] In old practice. To go without day; to be dismissed from court without further day assigned for appearance, or without any continuance to any certain day; to be finally dismissed or discharged. *Cowell.* *Litt.* sect. 201. *Co. Litt.* 134 b. See *Eat inde sine die*.

**ALEU.** See *Alleu*.

**ALFET.** [Sax. *alfæth*, from *alan*, to heat, and *fæt*, a vessel.] In the ordeal by boiling water, was the cauldron containing the water, in which the accused dipped his arm up to the elbow. *Cowell.* *Spelman*, voc. *Ordealium*.

**ALIA ENORMIA.** L. Lat. In pleading. Other wrongs. Words used in the old declarations, in actions of trespass, which, after stating the particular trespass complained of, concluded,—"Et alia enormia ei intulit," &c. *Towns. Pl.* 420, 421. This has been literally retained in the modern forms, ("and other wrongs to the said plaintiff then and there did," &c.,) the emphatic words of the Latin being, as usual, employed to designate the clause. 1 *Chitt. Pl.* 397, 398. See *Enormia*, *Enormis*.

**ALIANCE, Aliaunce, Alience.** L. Fr. Confederacy, allegation, allegiance. *Kelham.* See *Alliance*.

**ALIAS.** Lat. In practice. Otherwise. See *Alias dictus*.

At another time, on another occasion, formerly, before. A word used in the Latin forms of English writs from a very early period, in cases where a writ of the same kind had been issued *before*, referring to such writ. *Præcipimus tibi sicut alias tibi præcepimus*, &c. *Bract.* fol. 74 b, 441 a. *Reg. Orig.* 65, et *passim*. 1 *Reeves' Hist. E. L.* 485. This clause has been literally translated in the English forms; ("We command you, as we have *before* commanded you,") and constitutes an essential part of the modern writs of *capias ad respondendum*, *feri facias*, *capias ad satisfaciendum*, and other writs, where a writ of the same description has been previously issued without effect, and returned by the sheriff or other officer; the new or second writ being commonly termed an *alias* writ, and the distinctive clause above given, the *alias* clause. 3 *Bl. Com.* 283. 1 *Tidd's Pr.* 128. 1 *Archb. Pr.* 292.

**ALIAS DICTUS, or ALIAS.** L. Lat. In practice. Otherwise called; otherwise. A term used in legal proceedings to denote a second or further description of a person who has gone by two or more different names. Thus, if the same person is known by the name of John Brown as well as the name of John Smith, he is described in civil and criminal pleadings, and in legal language generally, as John Smith, otherwise called (*alias dictus*, or *alias*,) John Brown: and such second name is called his *alias*. *Archb. Crim. Pl.* 28. *Dyer*, 50 b. *Wharton's Am. Crim. Law*, 67, 68. A similar expression is used in describing a defendant when sued on an instrument in which he is described by a name different from his ordinary or real name. *Jacob*.

**ALIBI.** Lat. In criminal law. Elsewhere, in another place. A term used to express that mode of defence to a criminal prosecution, where the party accused, in order to prove that he could not have committed the crime with which he is charged, offers evidence to show that he was in another place at the time; which is termed setting up an *alibi*. *Tomlins. Foster's Crown Law*, 368. *Wills on Circumst. Evid.* 115. This term is of great antiquity in English law, and is used by Bracton in describing the proceedings on criminal appeals, in precisely its modern sense and application. *Si appellatus docere poterit—se eadem die fuisse alibi, ita quod nullo modo præsumi posset contra ipsum, quod interesse posset tali facto, tali die, propter locum ita remotum, quod*

*hoc esset impossibile, tunc cadit intentio appellantis*; if the appellee (the accused) can show that on the same day he was elsewhere, so that it can in no manner be presumed against him that he could have been present at the commission of the act on the day stated, it being impossible, on account of the distance between the places, then the complaint of the appellant (the accuser) abates, or falls to the ground. *Bract. fol. 140 a.*

**ALIEN.** [Lat. *alienigena*; L. Fr. *alien nee*; from *alienus*, q. v.] A stranger born; a person born in another or foreign country, as distinguished from a native or natural born subject or citizen. In English law, one born out of the ligiance or allegiance of the king. *Litt. sect. 198. Co. Litt. 129 a. 7 Co. 31. 1 Bl. Com. 366, 373. 2 Steph. Com. 426—429. See Stat. 7 & 8 Vict. c. 66.*

In American law. One born out of the jurisdiction of the United States. *2 Kent's Com. 50. See United States Digest, Alien. Alien and foreigner* are synonymous terms. *1 Peters' R. 343. See Foreigner.*

**ALIEN AMY.** L. Fr. An alien friend. An alien resident, who is the subject or citizen of some friendly power or state. *Alien enemy* is an alien who is the subject or citizen of some hostile power or power.\* *Dyer, 2 b. Co. Litt. 129 b. Bac. Abr. Aliens, D.*

To **ALIEN** or **ALIENE.** [L. Fr. *aliener*; Lat. *alienare*, from *alienus*, another's.] To make a thing another man's, (*alienum facere*;) to convey or transfer the property of a thing from one person to another; to alienate. Usually applied to the transfer of lands and tenements. *Co. Litt. 118 b. Termes de la ley. Cowell. See Alienare, Alienus, Transfer.*

**ALIENAGE.** The condition or state of an alien. See *Alienism.*

**ALIENARE.** Lat. [from *alienus*, another's.] In the civil and common law. To alien, or alienate; to make another's, (*alienum facere*;) to transfer to another, (*in alium transferre*.) *Inst. 2. 1. 40. Id. 2. 8. pr. et seq.* In the civil law it implied delivery of possession. *Corporalis res—a domino tradita, alienatur*; a corporeal thing—when delivered by the owner, is aliened. *Inst. 2. 1. 40. Alienatum non propriè dicitur quod adhuc in dominio venditoris manet, venditum tamen recte dicitur*; a thing which still remains in the ownership, or under the control of the seller, is not properly said to be

aliened, though it may be said to be sold. *Dig. 50. 16. 67.*

In the common law, this term is confined to real property. *Bract. fol. 29 a. In feodo alienavit*; he aliened in fee. *Reg. Orig. 144 b. Co. Litt. 118 b.* But see *Litt. sect. 177.* According to Lord Coke, *transferre* is a more general word than *alienare*; for *alienare* is regularly intended of the act of the party; but *transferre* comprehends also acts in law, as descents, escheats and the like. *2 Inst. 406. See Transferre.*

**ALIENATE.** [Lat. *alienare*, q. v.] To convey or transfer; the same as to *alien*, which is the more common word. See *To alien.*

**ALIENATIO.** Lat. [from *alienare*, q. v.] In the civil law. The transfer of the ownership of a thing to another; alienation. *Inst. 2. 8. pr. Dig. 50. 16. 67.* An implied transfer by prescription, (*usucapio*.) *Id. 50. 16. 28.*

The transferring, or granting of a right. *Cod. 4. 51. 7. 1 Mackeld. Civ. Law, 179, § 185. Abalienatio (q.v.)* was sometimes used.

In the common law. Alienation or conveyance, especially of real property. *Stat. Marlbr. c. 30. Bract. fol. 46. Iniquum est ingenuis hominibus non esse liberam rerum suarum alienationem.* It is unjust that freemen should not have the free disposal of their own property. *Co. Litt. 223 a. 4 Kent's Com. 131.*

**ALIENATION.** [Lat. *alienatio*, q. v.] Transfer to another, (*in alium*); the act of making a thing another's, (*alienum*); conveyance, particularly of real estate, comprising any method wherein estates are voluntarily resigned by one man and accepted by another. *2 Bl. Com. 287. 1 Steph. Com. 433. 2 Crabb's Real Prop. 1050, § 2437.*

**ALIENCE, Aliaunce.** L. Fr. Confederacy, combination. *L. Fr. Dict.*

**ALIENE.** To transfer, or convey. *2 Bl. Com. 290.*

**ALIENEE.** L. Fr. and Eng. A purchaser.

**ALIENER.** L. Fr. To alien, convey or sell. *L. Fr. Dict.*

**ALIENI JURIS.** Lat. In the civil law. One subject to the power or authority of another, (*alieno juri subjectus*); as of a pa-

rent, master or guardian. *Inst.* 1. 8. *Bract.* fol. 6 a. 1 *Mackeld. Civ. Law*, 130, § 120. The opposite of *sui juris*, (q. v.)

**ALIENIGENA.** Lat. [from *alienus*, of another place, and *gignere*, to bear; L. Fr. *alien ne*: the opposite of *indigena*, Fr. *deins ne*.] One born abroad; an alien born; an alien. *Bract.* fol. 427 b. *Alienigena est alienæ gentis, seu alienæ ligeantia, qui etiam dicitur peregrinus, alienus, exoticus, extraneus*; an alien born is one of another nation or allegiance, who is also called a foreigner, an alien, one from without or abroad, a stranger. 7 Co. 31.

**ALIENISM.** The state, condition or character of an alien. 2 *Kent's Com.* 56, 64, 69.

**ALIENNEE.** L. Fr. The plea of alienage, or that the plaintiff in an action is an alien born, (*alien nee*.) *Archb. Civ. Plead.* b. 1, part 1, ch. 7, sect. 1.

**ALIENUS.** Lat. [from *alius*, another.] Another's; belonging to another; the property of another. *Alienus homo*; another's man, or slave. *Inst.* 4. 3. pr. *Aliena res*; another's property. *Bract.* fol. 13 b. *Sic utere tuo ut alienum non laedas.* Use your own property, or exercise your own right, so as not to injure another's. 1 *Bl. Com.* 306. 3 *Id.* 217.

Done by another; the act of another. *Nemo puniatur pro alieno delicto.* No one is (should be) punished for the crime of another. *Wingate's Max.* 336, max. 87.

One of another country; an alien. See *Alien*, *Alienigena*.

**ALIMONY.** [Lat. *alimonia*, from *alere*, to nourish, or support.] Nourishment, support or maintenance. An allowance made to a wife out of the husband's estate, for her maintenance, either during a matrimonial suit, or at its termination, where she has proved herself entitled to a separate maintenance. That proportion of the husband's estate which the wife sues, in the ecclesiastical court, or court of equity, to have allowed her for her present subsistence and livelihood, according to law, upon any such separation from her husband as is not caused by her own elopement or adultery.\* *Shelford Marr. & Div.* 586. In causes between husband and wife, on the principle that the whole property is supposed by law to be vested in the husband, he is in most cases obliged by law to pay the expenses on both sides, and to allow the wife alimony during the suit. *Id. ibid.* 1 *Bl. Com.* 441.

3 *Id.* 94. 2 *Steph. Com.* 312. 2 *Kent's Com.* 99, 128. This allowance is sometimes called in the old law, the wife's *estover*, or *estovers*. 1 *Bl. Com.* 441. *Cowell.* See *Estovers*.

**ALIQUELITER.** L. Lat. In any way. *Litt.* sect. 226.

**ALIQUELID.** Lat. Something, somewhat. *Aliquid conceditur ne injuria remaneat impunita, quod alias non concederetur*; something is [will be] conceded, to prevent a wrong remaining unredressed, which otherwise would not be conceded. Co. *Litt.* 197 b.

**ALIQUELID POSSESSIONIS ET (or SED) NIHILJURIS.** L. Lat. Somewhat of possession, and nothing of right, [but no right.] A phrase used by Bracton to describe that kind of possession which a person might have of a thing as a guardian, creditor, or the like; and also that kind of possession which was granted for a term of years, where nothing could be demanded but the usufruct. *Bract.* fol. 39 a, 160 a.

**ALIQUELIS.** Lat. One; a person. *Aliquis non debet esse judex in propria causa (quia non potest esse judex et pars.)* One ought not to be a judge in his own cause, because he cannot be a judge and party both. Co. *Litt.* 141 a.

**ALITER.** Lat. Otherwise. A term often used in the reports.

*Aliter puniuntur ex eisdem factionibus servi quam liberi; et aliter qui quidem aliquid in dominum parentemve commiserit, quam in extraneum; in magistratum quam in privatum*; slaves are punished differently, for the same actions, from freemen; and one who offends against a master or parent, differently from one who does the like against a stranger; and one who offends against a magistrate, differently from one who injures a private individual. *Bract.* fol. 105 a. 3 *Inst.* 220.

**ALIUD.** Lat. Another; one thing—another thing. *Aliud est possidere, aliud esse in possessione*; it is one thing to possess, another thing to be in possession. *Hob.* 163. *Bract.* fol. 206.

*Aliud est celare, aliud tacere.* To conceal is one thing; to be silent is another thing. Lord Mansfield, 3 *Burr.* 1905, 1910. See *Concealment*.

**ALIUNDE.** Lat. From another source or quarter.

**ALL.** [Lat. *omnis, totus.*] A word of constant occurrence in deeds, wills and other instruments, and which, especially in wills, has been made the subject of repeated construction by the courts. 1 *Vernon*, 3, 340. 3 *P. Wms.* 56.

"All my estate," in a will, has been held to carry a fee. 6 *Mod.* 106, 110. 8 *Vesey, Jr.* 604. The words "all his estate," will pass everything a man has; but if the word "all" is coupled with the word "personal," or a local description, then the gift will pass only personalty, or the specific estate particularly described. Lord Mansfield, C. J., *Cowp.* 299, 306. The question whether the words "all my estate and effects" will include a real estate or not, depends, first, upon the immediate context of the will; secondly, upon the general form and scheme of the will, as demonstrating the intention. Lord Eldon, C., 9 *Vesey, Jr.* 137, 142.

"All my real property," in a will, has been held to import the same as "all my estate." 18 *Vesey, Jr.* 193.

"All I am worth," without other words to control them, pass real as well as personal estate. 1 *Bro. C. C.* 437.

"All I am possessed of," in a will, construed. 5 *Vesey, Jr.* 811, 816.

"All debts due to me," and "whatever debts may be due to me," in a will, held to pass a bill of exchange, and a balance of cash at a banker's. 1 *Merivale*, 541, note. See 3 *Id.* 434.

"All demands," in a submission to arbitration, held to include questions concerning real as well as personal property. 2 *Caines' R.* 320. 15 *Johns. R.* 197.

"All claims and demands whatsoever," in a release, held to be restricted to the subject matter of the release. 1 *Edwards' Ch. R.* 34.

**ALL FOURS.** A case is said to *go upon all fours* when it is exactly similar in its circumstances to the case in support of which it is quoted; or when it is exactly in point. See *Currit quatuor pedibus*.

**ALLEGARE.** Lat. To allege or state; to bring forward, or set up, as a claim or defence. *Allegans*; alleging. *Allegatum, allegata*; alleged.

*Allegans contraria non est audiendus.* One alleging contrary or contradictory things [whose statements contradict each other,] is not to be heard. 4 *Inst.* 279. Applied to the statements of a witness. *Id.*

*Allegans suam turpitudinem non est audiendus.* One who alleges his own infamy is not to be heard. 4 *Inst.* 279.

*Allegari non debuit quod probatum non*

*relevat.* That ought not to be alleged, which if proved is not relevant. 1 *Chan. Cas.* 45.

**ALLEGATA ET PROBATA.** L. Lat. Things alleged, and things proved; allegations and proofs. It is a general rule of evidence that the *allegata* and *probata* must agree. A party is not allowed to state one case, and make out a different one by proof. Baldwin, J., 10 *Peters' R.* 177, 209. 1 *Greenl. on Evid.* § 51. Story, J., 2 *Sumner's R.* 206, 209. The cause must stand before the court to be heard *secundum allegata et probata.* *Id. ibid.*

**ALLEGATION.** [Lat. *allegatio*, from *allegare*, q. v.] In the common law. Statement or pleading. *Steph. Plead.* 1, 123, 124.

The statement of fact, or pleading of a party to an action; such as a declaration, plea, &c. *Id.* 23, 59.

A statement in a particular pleading. *Id. passim.*

**ALLEGATION.** In English ecclesiastical law. The pleading or statement of a party in a cause; an additional or supplementary pleading. 1 *Bro. Civ. Law*, 471, 473. 3 *Bl. Com.* 100.

A species of pleading, used generally in propounding or contesting a will, claiming an interest in an intestate's effects, &c. 4 *Chitt. Gen. Pr.* 166.

An *allegation of faculties* is an allegation given in by a wife claiming alimony, stating the property of the husband. *Shelford Marr. & Div.* 587.

**ALLEGATION OF DIMINUTION.** See *Diminution*.

**ALLEGIANCE, Ligeance.** [L. Lat. *al-ligeantia*, from *alligare*, to bind to; *ligeantia*, from *ligius*, qq. v.] The tie or bond (*ligamen*), of fidelity and obedience, by which native born subjects or citizens are bound to their sovereign, government or country, in return for the protection afforded them.\* 1 *Bl. Com.* 366. 4 *Id.* 74. 2 *Steph. Com.* 420. 2 *Kent's Com.* 39, et seq. See *Natural allegiance, Local allegiance, Expatriation*.

In England allegiance is of feudal origin, being formerly sworn to the sovereign as lord paramount or liege lord of the realm. It was an exalted species of fealty, and the oaths of fealty and allegian were once couched in almost the same terms. 1 *Bl. Com.* 367. The oath of fealty is called by Blackstone the parent of the oath of allegi-

ance. 2 *Id.* 53. In the United States, allegiance is not used in the feudal sense, arising out of the doctrine of tenure. 2 *Hill's S. Car. R.* 1. 2 *Kent's Com.* 44, note.

ALLEGIANCE. L. Fr. [from *alleger*, to lessen.] Alleviation, relief, redress. *Kelham*.

ALLEGIARE. L. Lat. [from *ad*, by, and *lex*, law.] In Saxon law. To clear one's self according to law, (*juxta normam legis se excusare*;) to exculpate one's self by taking an oath, (*sacramento interposito se culpâ eximere*;) to wage one's law, (*legem vadiare*.) *Spelman*. See *Lex*, *Ley gager*, *Wager of law*.

ALLER. See *Aler*.

ALLEVIARE. L. Lat. To levy or pay an accustomed fine or composition; to redeem by such payment. *Cowell*.

ALLEU, *Aleu*, *Allieu*, *Alieu*. Fr. [L. Lat. *alodum*, *allodium*, q. v.] In French law. An allodial estate, as distinguished from a fief. *Espit des Lois*, liv. 31, c. 8. *Kelham*.

ALLIANCE, *Aliance*, *Alience*. L. Fr. Confederacy; allegation; allegiance. *Kelham*. L. Fr. *Dict*.

ALLISION. [Lat. *allisio*, from *allidere*, to dash against.] In maritime law. A striking against; the running of one vessel against another; sometimes distinguished from *collision*, which is the running of two vessels against each other, or a striking together. *Jacobsen's Sea Laws*, 328, and note. See *Collision*.

ALLOCARE. L. Lat. In old practice. To allow. *Cum aliquis—petat quod justitiarum eam [exceptionem] allocent, quam si allocare noluerint, &c.*; where a party prays that the justices shall allow his exception, which if they refuse to allow, &c. *Stat. Westm.* 2, c. 31.

ALLOCATIO. L. Lat. [from *allocare*, q. v.] An allocation, or allowance. *Towns. Pl.* 27. See *Allocation*.

ALLOCATION. [L. Lat. *allocatio*.] An allowance made upon an account in the English exchequer. *Cowell*.

ALLOCATIONE FACIENDA. See *De allocatione facienda*.

ALLOCATUR. L. Lat. [from *allocare*, to allow.] In practice. It is allowed. A term used, (when the proceedings were in Latin,) to express the allowance of a thing or proceeding, by a court, judge or judicial officer.\* Now applied in England to the certificate given by the master, on taxing a bill of costs, showing the amount taxed, or *allowed*. 1 *Tidd's Pract.* 337, 500.

Used also to denote the *allowance* of a writ or order by a judge, which is generally done by the judge's endorsing the word "allowed," and signing his name.

Used also in the earlier reports, to denote the *concession* of a point by a court on argument; though the term *concessum* (q. v.) is more frequently employed for this purpose. *Sed non allocatur*, (but it is not allowed), is a common expression.

ALLOCATUR EXIGENT. In English practice. A species of the writ of *exigent*, in the nature of an *alias* writ; used in the process of outlawry. 1 *Tidd's Pr.* 132. *Archb. N. Pract.* 485. See *Exigent*.

ALLODIAL. [L. Lat. *allodialis*, from *allodium*, q. v.] In the law of estates. That which is not held of any superior; free or independent; the opposite of *feudal*.\* In the feudal law, *allodial* estates were distinguished from fiefs. *Espit des Lois*, liv. 31, c. 8. *Allodial* lands are such as are free from any rent or service. 2 *Bl. Com.* 47, 60, 105. 3 *Kent's Com.* 488, 498, 513, 514. 1 *Robertson's Charles V.*, Appendix, note viii.

ALLODIUM, *Alodium*, *Alodum*, *Alode*. L. Lat. [Fr. *alleu*, *aleu*.] In feudal law. Free, absolute or independent ownership; a free estate, (*prædium liberum*;) property held in absolute dominion, without owing any rent, fealty or service to any superior, (*nulli servituti obnoxium*;) every man's own land, held of no one, and of which he has the absolute property.\* 2 *Bl. Com.* 105. *Spelman*, voc. *Aloarius*. The opposite of *feudum*, (feud or fief,) which always implies tenure or service. 1 *Steph. Com.* 161. 3 *Kent's Com.* 488. 1 *Robertson's Charles V.*, Appendix, note viii. See *Feudum*, *Beneficium*.

The etymology of this word has been variously given. *Spelman* conjectures it to be derived either from Sax. *a*, to, and *leod*, people; belonging to the people (*popularis*,) because freely alienable from one to another; or from *a*, without, and *leod*, or *leud*, a vassal; without vassalage, service or burden. *Blackstone* considers it the same as *odh al*, in the Northern languages, (*odh*,

property, and *al*, all,) with the syllables transposed, *alldh*; and hence signifying entire or absolute property. 2 *Bl. Com.* 45, note (f.) Dr. Robertson adopts Wachter's derivation, from *an*, and *lot*, that is, land obtained by lot. *Hist. Charles V.*, Appendix, note viii.

ALLOIGNE. See *Eloigne*.

ALLOIGNER, *Alligner*, *Alloyner*, *Alyner*. L. Fr. To remove to a distance, carry away, put off or delay. *Kelham*. See *Eloigner*.

ALLONGE. Fr. In French law. A piece of paper annexed to a bill or note, for the purpose of making further endorsements, where no room is left for that purpose on the instrument itself.\* *Story on Bills*, § 204. *Story on Prom. Notes*, § 151. See 18 *Pick. R.* 63.

ALLOYNOUR, *Alleynour*. L. Fr. One who conceals, steals or carries off a thing privately. *Britt.* c. 17.

ALLUVIO. Lat. [from *alluere*, to wash against, or upon.] In the civil law. A gradual deposit of soil made by a stream upon a piece of ground; in which case, upon the principle of accession, (q. v.) the proprietor of the land becomes also proprietor of the soil deposited. 1 *Mackeld. Civ. Law*, 280, § 267. *Inst.* 2. 1. 20. *Est alluvio incrementum latens*; alluvion is an imperceptible increase. *Id.* *Bract.* fol. 9 a. It is in this respect distinguished from *avulsio*, or *vis fluminis*. *Inst.* 2. 1. 21. See *Avulsion*. This term has been adopted in the common law under the name of *alluvion*, (q. v.)

ALLUVION. [Lat. *alluvio*, q. v.] In the common law. The gradual washing up of sand and earth by a stream or the sea, so as in time to form land (*terra firma*), where none existed before; the imperceptible increase or gain of land from water by this process.\* *Bract.* fol. 9 a. 2 *Bl. Com.* 261, 262. 3 *Kent's Com.* 428, and notes. *Schultes' Aquatic Rights*, 116. *Broom's Max.* 71. 1 *Crabb's Real Prop.* 109, § 105.

ALM, *Alme*. L. Fr. Soul. L. Fr. *Dict.* *Kelham*.

ALMOIGN, *Almoigne*, *Almoin*. L. Fr. [from Lat. *eleemosyna*, Gr. *ἐλεημοσύνη*.] Alms. See *Frank almoign*.

ALNAGE, *Aulnage*. [Fr. *aulnage*, from *aulné*, Lat. *ulna*, an ell.] In old English

law. Ell measure; the measuring with an ell. *Stat.* 17 *Edw. IV.*, c. 5. *Blount*. See *Ulna*.

ALNAGER, *Aulnager*, *Alneger*. [L. Lat. *ulniger*, *ulnator*.] A measurer by the ell. A sworn public officer in England, whose duty it was to look to the assise of woollen cloths made in the country, and to put a seal ordained for that purpose, upon them. *Stat.* 25 *Edw. III.*, st. 4, c. 1. *Stat.* 3 *Ric. II.*, c. 2. *Cowell*. *Blount*. *Termes de la ley*.

ALNETUM. L. Lat. [from *alnus*, an alder tree.] A place where alders grow. *Co. Litt.* 4 b. *Shep. Touch.* 95. *Blount*. *Theoall Dig.* lib. 1, c. 8, § 24.

ALOARIUS. L. Lat. The holder of an *alodium*, or free estate. *Domesday Book*, cited in *Spelman*. See *Alodiarius*.

ALODE, *Alodes*, *Alodis*. L. Lat. In feudal law. Old forms of *alodium*, or *alodium*, (q. v.) *Spelman*, voc. *Aloarius*. 1 *Robertson's Charles V.*, Appendix, note viii.

ALODIARIUS, *Alodarius*, *Aloarius*. L. Lat. [from *alodium*, q. v.] In old English law. The holder of an *alodium*, or free estate; a kind of tenant in free socage. *Spelman*, voc. *Aloarius*. The lord of a free manor. *Blount*.

ALODUM. L. Lat. In feudal law. One's own; one's property, (*proprium*). *Ducange*, voc. *Alodis*. 1 *Rob. Charles V.*, Appendix, note viii.

ALOINE. See *Eloign*.

ALORS. L. Fr. There; at that time, in that place, L. Fr. *Dict.* *Kelham*.

ALT. L. Fr. [from Lat. *altus*, q. v.] High. *Id.*

ALTA PROBITIO. L. Lat. High treason. 4 *Bl. Com.* 75. See *High treason*.

ALTA VIA. L. Lat. A highway. 1 *Salk.* 222.

ALTERNATIM. L. Lat. Interchangeably. *Litt.* sect. 371. *Towns. Pl.* 37.

ALTERNATIVE. [L. Lat. *alternativus*.] In practice. The choice of one or the other of two things; that which requires the one or the other of two things to be done. An *alternative writ*, such as a *mandamus*, is one

which requires certain acts to be done, or cause to be shown why they are not done.\* 3 *Steph. Com.* 683. See *Mandamus*. A rule *nisi* (q. v.) and a rule or order to show cause, are alternative proceedings.

**Alternativa petitio non est audienda.** An alternative petition or demand is not to be heard. 5 *Co.* 40. A party is not allowed to make his demand in the alternative or disjunctive, but must ask for a thing certain, that is, one specific thing. A maxim applied to writs in the old real actions.

**ALTERNIS VICIBUS.** L. Lat. By alternate turns; at alternate times; alternately. *Co. Litt.* 4 a. *Shep. Touch.* 206.

**ALTERUTER.** L. Lat. One of the two. 1 *Ld. Raym.* 124.

Each. *Alteruter et quilibet*; each and every. *Towns. Pl.* 23.

**ALTO ET BASSO.** See *De alto et Basso*.

**ALTRES.** See *Autres*.

**ALTUM, Altus.** Lat. High; deep. See *Altum mare*.

**ALTUM MARE.** L. Lat. The high sea, or seas. *Co. Litt.* 260 b. *Super altum mare*; on the high seas. *Hob.* 212 b. See *High seas*.

**ALVETUM.** A misprint in the Register for *alnetum*, noticed by Theloall in his Digest. *Reg. Orig.* 2 a. *Thel. Dig.* lib. 8, c. 1, § 24. *Alvey*, however, is used in French. *Kelham*.

**ALVEUS.** Lat. The channel or bed of a river or stream. *Inst.* 2. 1. 23. *Alveus derelictus*; a deserted channel; the dry bed of a stream. 1 *Mackeld. Civ. Law*, 280, § 267.

**ALZ, Az.** L. Fr. They, them. *Kelham*.

**AMALPHITAN, or AMALFITAN TABLE.** The earliest code of modern sea laws, compiled for the free and trading republic of Amalphi in Italy, about the time of the first crusade, toward the end of the eleventh century. 1 *Azuni's Marit. Law*, 376. 3 *Kent's Com.* 9.

**AMBACTUS.** Lat. or old Gallic. A hired servant or messenger; one sent about from place to place; (Gr. *περιφόρητος*.) *Spelman* voc. *Ambascia*.

**AMBASCIA, Ambasia.** L. Lat. [from

Germ. *ambacht*, service, or Gallic *ambactus*; Lat. *legatio*.] An embassy; or service. *Si in dominica ambascia fuerit occupatus*; if he were engaged in the king's service. *LL. Salic.* tit. 1, § 3. *Spelman*.

**AMBASCIATOR, Ambassador, Ambasciator.** L. Lat. [from *ambascia*, q. v.] A person sent about in the service of another; a person sent on a service. A word of frequent occurrence in the writers of the middle ages. *Spelman*. See *Ambassador*.

**AMBASSADOR.** [Lat. *legatus*; L. Lat. *ambasciator, ambasciator*, q. v.] In international law. A diplomatic minister or agent; a person sent by one sovereign power to another, with authority to treat on affairs of state. 4 *Inst.* 153. 1 *Kent's Com.* 39. *Tomlins*. Ambassadors belong to the first class of public ministers. *Wheaton's Elem. Intern. Law*, 264.

**AMBAXEUR.** L. Fr. An ambassador. *Kelham*.

**AMBIDEUX, Amedeus, Amdeus Ambdoi.** L. Fr. Both. *Britt.* c. 24. *Kelham*.

**AMBIDEXTER.** Lat. [from *ambo*, both, and *dexter*, the right hand.] One that can use his left hand as well as his right, or that plays or acts on both sides. Applied by Bracton to sheriffs and other bailiffs who took from both sides, (*qui capiunt ex utraque parte*.) *Bract.* fol. 117 a. Applied in more modern law to jurors who took money from both sides for giving their verdict. *Termes de la ley*. *Cowell*. *Blount*. See *Embracer*.

**AMBIGUITAS.** Lat. [from *ambiguus*, doubtful, uncertain, obscure.] Ambiguity; uncertainty of meaning.

**Quoties in verbis nulla ambiguitas, ibi nulla expositio contra verba fienda est.** As long as there is no ambiguity in the words [of an instrument] there must be no exposition made of it against its words. 2 *Bl. Com.* 379. When the intent of the parties is clearly expressed, the intent must govern the construction. *Shep. Touch.* (by Preston) 101.

*Ambiguitas patens*; patent, open or apparent ambiguity; that which appears to be ambiguous upon the deed or instrument itself. *Ambiguitas latens*; latent or hidden ambiguity; that which seems certain and without ambiguity, for any thing that appears upon the deed or instrument, but where there is some collateral matter out of the deed that breeds the ambiguity. *Ba-*



*con's Max.* 90, regula 23. See *Ambiguity*.

**Ambiguitas verborum latens verificatione supplietur, nam quod ex facto erit ambiguum verificatione facti tollitur.** A latent ambiguity of words is [may be] supplied, or helped by averment, for that ambiguity which arises out of a fact; [an extrinsic fact,] is [may be] removed by an averment of fact, [that is, by an averment of the fact as it really is.] *Bacon's Max.* 90, regula 23. Thus, if I grant my manor of S. to J. F. and his heirs, here appeareth no ambiguity at all; but if the truth be that I have the manors both of South S. and North S., this ambiguity is matter in fact, and therefore it shall be holpen by averment, whether of them was that the party intended should pass. *Id.* 92. *Broom's Max.* 260. 1 *Powell on Devises*, 477. 2 *Kent's Com.* 556. In other words, where the ambiguity itself is produced by extraneous circumstances, its explanation must of necessity be sought for through the same medium. 1 *Steph. Com.* 463.

The word *verificatio* in this maxim is generally translated "evidence," or "proof;" but Bacon's own translation is "averment." See *Ambiguity, Averment*.

**AMBIGUITY.** [Lat. *ambiguitas*, q. v.] Doubtfulness, uncertainty or obscurity of meaning. Ambiguity in written instruments is either *patent*, (*patens*), that is, open or apparent; or *latent*, (*latens*), hidden or concealed.

A *patent ambiguity* is one which appears on the face of the instrument itself, and renders it ambiguous and unintelligible; as if, in a will, there were a blank left for the devisee's name. *Broom's Max.* 261. *Smith on Contracts*, 28. *Bacon's Max.* 90, regula 23. See *Ambiguitas*.

A *latent ambiguity* is where the instrument itself is, on the face of it, intelligible enough, but a difficulty arises in ascertaining the identity of the subject matter to which it applies; the ambiguity appearing only in the application of it, and being introduced by evidence of something extrinsic, or by some collateral matter out of the instrument. Thus, if a devise were to J. S., without further description, the ambiguity would lie *hid* until evidence had been produced showing that there was a great number of persons corresponding in name with the devisee, and then it would arise; it becoming a matter of doubt which J. S. was meant.\* *Broom's Max.* 260. *Smith on Contracts*, 29. 1 *Man. & Gr.* 17, 18, notes. 2 *Kent's Com.* 556. Marshall, C. J., 4 *Cranch R.* 224.

A *latent ambiguity* may be explained by

extrinsic or parol evidence, but a *patent* ambiguity, in general, cannot. *Broom's Max. ub. sup.* 2 *Kent's Com. ub. sup.* 1 *Steph. Com.* 463. See *Ambiguitas*.

**AMBIGUOUS.** See *Ambiguus*.

**AMBIGUUS.** Lat. [from *ambigere*, to doubt, to be in suspense.] Ambiguous, uncertain, doubtful, obscure; of uncertain meaning: that can be taken in more ways, or understood in more senses than one.

**Ambigua responsio contra preferentem est accipienda.** An ambiguous answer is to be taken against [is not to be construed in favor of] him who offers it. 10 *Co.* 59.

**Ambiguum placitum interpretari debet contra preferentem.** An ambiguous plea ought to be interpreted against the party pleading it. *Co. Litt.* 303 b. It is a general rule of pleading, that pleadings must not be ambiguous or doubtful in meaning; and when two different meanings present themselves, that construction shall be adopted which is most unfavorable to the party pleading. *Steph. Pl.* ch. 2, sect. 5, rule 2. *Broom's Max.* 257, 258. The reverse of this rule applies after an ambiguity has been cured by pleading over, or by verdict. *Id.* 258.

**Verba ambigua fortius accipiuntur contra preferentem.** Ambiguous words are [to be] taken most strongly against the party making use of them. 2 *Kent's Com.* 556. *Bacon's Max.* 11, 12, reg. 3.

**AMBITUS.** Lat. [from *ambire*, to go about.] In the Roman law. The procuring of a public office by money or gifts; the unlawful buying and selling of a public office. *Inst.* 4. 18. 11. *Dig.* 48. 14. Literally, a going about, or canvassing for votes.

**AMBULATORIUS.** L. Lat. [from *ambulare*, to walk, or move about.] Ambulatory or moveable; admitting of alteration, not fixed.

**Voluntas testatoris ambulatoria est usque ad mortem.** The will of a testator is ambulatory, or not fixed, until death. 2 *Bl. Com.* 502. 4 *Co.* 61. *Shep. Touch.* 401. 1 *Powell on Devises*, 545. No testament is of any effect till after the death of the testator. 2 *Bl. Com. ub. sup.* A man may alter his will at his pleasure. *Shep. Touch. ub. sup.*

**AMBULATORY.** [L. Lat. *ambulatorius*, q. v.] That which moves, or may be moved about; moveable; not fixed or stationary. The court of King's Bench in Eng-

land was formerly called an *ambulatory court*, because it followed the king's person, and was held sometimes in one place and sometimes in another. So, in France, the supreme court or parliament was originally *ambulatory*. 3 *Bl. Com.* 38, 39, 41. 1 *Robertson's Charles V.*, Appendix, note xxiii.

That which may be changed or altered; not fixed in its legal character. The will of a testator is said to be *ambulatory* until death. See *Ambulatorius*. The return of a sheriff has been said to be *ambulatory* until it is filed. *Wilmot, J.*, 3 *Burr.* 1644.

**AMENABLE.** [from Fr. *amener*, *amesner*, to lead; or *amainable*, from *main*, a hand.] Tractable or manageable; that may be led or governed. Applied in the old books to a woman that is governable by her husband. *Cowell.* See *Amesnable*.

In modern usage, responsible; subject to answer in a court of justice. *Jacob.*

**AMEND.** [Fr. *amender*; L. Lat. *emendare*; from *e*, from, and *menda*, a fault, or error.] In practice. To free from error or deficiency; to correct an error; to supply a deficiency. See *Amendment*.

**AMENDMENT.** [L. Fr. *amendement*; L. Lat. *emendatio*.] In practice. The correction of an error committed in any process, pleading or proceeding at law, or in equity, and which is done either of course, or by the consent of parties, or upon motion to the court in which the proceeding is pending. 3 *Bl. Com.* 407, 448. 1 *Tidd's Pr.* 696. 8 *Co.* 156, [319.] *Mansel on Demurrer*, 104, 149. *Mitford's Chanc. Pl.* 18. 1 *Daniell's Chanc. Pr.* 454. 2 *Id.* 911. 1 *Barbour's Chanc. Pr.* 206. *Com. Dig.* Amendment. *United States Digest*, Amendment.

**AMENDER.** L. Fr. To amend, make good, make up for, compensate. *Defautes amender*; to make good defaults. *Britt.* c. 21. *Les damages amender*; to compensate for damages. *Id.* c. 27.

**AMENDES.** L. Fr. Amends. *Dues amendes*; due amends. *Britt.* c. 27. *Amendes de damages.* *Id.* *ibid.*

**AMENDS.** [L. Fr. *amendes*; L. Lat. *emenda*, *emendā*.] In practice. Compensation or satisfaction for an injury, or loss. See *Emenda*, *Emendatio*, *Tender of amends*.

**AMENER.** L. Fr. To lead; to lead away, as an animal that is stolen. *Britt.* c. 24.

**AMENSURARE.** L. Lat. To admeasure. *Bract.* fol. 314 a. See *Admensurare*.

**AMENSURATIO.** L. Lat. [from *amensurare*, q. v.] Admeasurement. *Bract.* fol. 314 a. See *Admensuratio*.

**AMERALIUS.** L. Lat. [Gr. *αμνραλιος*.] A naval commander, under the eastern Roman empire, but not of the highest rank; the origin, according to Spelman, of the modern title and office of admiral, (q. v.) *Spelman*, voc. *Admiralius*.

**AMERCE.** [L. Fr. *amercer*, from *merci*, mercy; L. Lat. *amerciare*.] In practice. To impose a pecuniary punishment, penalty or amercement, (q. v.); to fine. See *Fine*.

According to Sir William Blackstone, to be *amerced*, in the old English law, was to be à *mercie*, at the king's mercy (*in misericordia*), with regard to the fine to be imposed. 3 *Bl. Com.* 376. The French *amercie*, or *amercy*, may be taken in this double sense. *Si soit le gardein amercy*; if the keeper be amerced. *Britt.* c. 11. But in Latin to be "in mercy" (*esse in misericordia*), and to be "amerced," (*amerciari*) seem to have been originally phrases of different import; the former signifying merely "to be liable to an amercement," "to be condemned to an amercement." *De illis qui sunt in misericordia domini regis, et non sunt amerciati*; concerning those who are in the king's mercy, and are not amerced. *Bract.* fol. 116 b. *In misericordia* came to be used in records as expressive of judgment of amercement against either party to a suit, and is literally translated in the phrase "in mercy, &c.," with which judgment records still conclude, although no amercement is ever in fact imposed. 3 *Bl. Com.* 275, 376.

To *amerce* is now used as synonymous with to *fine*, and so it was anciently, in the popular sense of the term. *Richardson's Dict.* But in law there was a well established distinction between a fine and an amercement. See *Amercement*.

**AMERCEMENT, Amerciament.** [L. Lat. *amerciamentum*, *misericordia*; from Fr. *merci*, mercy.] In practice. A pecuniary punishment imposed by a court upon an offender; and supposed to be so called either because the offender thereby anciently put himself in the mercy (*in misericordia*) of the king or lord, or because the amount of the punishment was to be mercifully assessed, that is, at a less sum than was actually deserved. *Termes de la ley.* *F. N. B.* 76, K. *Co. Litt.* 126 b. 1 *Crabb's Real Prop.* 505, § 653.

Anciently there was an important distinction between an amercement and a fine.

A *fine* was a certain punishment, growing expressly out of some statute, and was always imposed and assessed by the court; an amercement was imposed by the court in general terms, (*quod sit in misericordia*, that the party be in mercy,) and was afterwards assessed or *affeer*d (that is, moderated, and reduced to a certain sum) by the peers or equals of the party, who were hence called *affeerors*. *Cowell. Termes de la ley. F. N. B. 76, H. K. 8 Co. 38, [77,] 59, [118.] 11 Id. 43. 1 Salk. 57. 3 Id. 33. 4 Bl. Com. 379. See Affeer, Affeerment.* This was pursuant to Magna Charta, (c. 14,) and the Statute of Westminster 1, (c. 6.) *Bract. fol. 116 b. See Amerciare.* Again, a fine was a more severe punishment, imposed for offences of magnitude; an amercement was a lighter or more merciful penalty, adapted to offences of a lighter character; (*multa levis levioribus erratis per misericordiam imposita.*) *Spelman, voc. Amerciammentum. 1 Manwood's Forest Law, 166, cited in Cowell. See Fine.* Lastly, the term amercement was applied more particularly to pecuniary punishments imposed upon the officers of courts, as sheriffs and coroners, and the word is still used in this sense. *Cowell. Bouvier. United States Digest, Amercement. See Amerciare.* In other respects, however, no essential distinction remains between an amercement and a fine. Amercements, in their ancient technical sense, are entirely disused in modern practice.

AMERCIAMENTUM. L. Lat. [from *amerciare*, q. v.] An amerciamment, or amercement. *Spelman. See Amercement.*

AMERCIARE. L. Lat. To amerce. *See Amerce. Liber homo non amercietur pro parvo delicto nisi secundum modum illius delicti, &c.; a freeman shall not be amerced for a small offence, unless according to the quality of such offence, &c. Magna Charta, c. 14. Et villanus—eodem modo amercietur,—si inciderit in misericordiam nostram; and a villein shall be amerced in the same manner—if he fall into our mercy. Id. ibid. See Bract. fol. 116 b. Scias quod amerciatus es ad unam marcam, &c. Et gravius amerciaberis, nisi, &c.; know that you are amerced at one mark, &c. And you will be more severely amerced, unless, &c. Reg. Jud. 18, 41.*

AMESNA. L. Fr. [from *amesner*, q. v.] Brought; led or carried away. *See Amesner.*

AMESNABLE. L. Fr. [from *amesner*, q. v.] That may be brought, led or carried. *Fitzh. Justice, 12 b. L. Fr. Dict.*

AMESNER, *Amener*. L. Fr. To lead. *Amesner son hoste; to lead his army. Litt. sect. 153.*

To bring, lead, carry or drive away. *See Amener.*

To cite, or summon. *Pur amesner ou summoner. Thel. Dig. lib. 1, c. 2.*

AMESUREMENT. L. Fr. Admeasurement. *Britt. c. 58. Reg. Orig. 155, regula.*

AMI, *Amy*. L. Fr. A friend. *See Amy.*

AMICUS CURIAE. L. Lat. In practice. A friend of the court; one who suggests something for the information of a court.\* A term frequently applied in the reports to a counsellor of the court, who, being present on an occasion when a judge is doubtful or mistaken in a matter of law, suggests something for the information of the court, such as a case which the judge may not have seen, or does not at the moment remember. *2 Keb. 548.* It is now exclusively applied to counsel not engaged in the cause before the court, but was formerly used in other senses. Thus, in the Prince's case, (8 Co. 15, 29,) the defendants, in addition to their pleadings, *ut amici curiae*, and to inform the court of the truth, &c., repeated to the court part of an act, &c. So, in the Yearbooks, it is said that any stranger, as *amicus curiae*, may move the court, &c. *H. 4 Hen. VI., 16. Thel. Dig. lib. 13, c. 14.*

AMITA. Lat. [Gr. *πάτραδελφῆ*.] In the civil law. A paternal aunt; a father's sister. *Inst. 3. 6. 1. Bract. fol. 68 b.*

AMITA MAGNA. Lat. In the civil law. A great aunt; a grandfather's sister, (*avi soror.*) *Inst. 3. 6. 2. Bract. fol. 68 b.*

AMITINUS, *Amitivus*. Lat. In the civil law. The son of an *amita*, or paternal aunt. *Amitiva*; the daughter of an *amita*. *Bract. fol. 68 b.* The children of a brother and the children of a sister were properly the *amitini* of each other. *Inst. 3. 6. 2.* The sons of your paternal aunt (*amita tuae filii*) call you *consobrinus*; you call them *amitini*. *Id. ibid.* In Bracton this word is printed *amitiuus*.

AMITTERE. Lat. To lose. He is considered as having lost a thing (*rem amisisse videtur*) who has an action against no one to recover it. *Dig. 50. 16. 14.*

AMITTERE CURIAM. L. Lat. To lose the court; to be deprived of the privi-

lege of attending the court. *Amittant curiam regis*; they shall be excluded from the king's court. *Stat. Westm.* 2, c. 44.

**AMITTERE LIBERAM LEGEM**, or **AMITTERE LEGEM TERRÆ**. L. Lat. In old English law. To lose one's franklaw; to lose the law of the land. To lose the liberty or privilege of swearing in any court; to lose the capacity of being put upon a jury, or being sworn as a witness in any cause; to be no longer *othsworths*, as it was called in the rude English of Bracton's time. This was a part of the punishment of those who had become infamous by having perjured themselves, or by having pronounced the word *craven* in the trial by battel. *Glanv.* lib. 2, c. 3. *Bract.* fol. 292 b. *Co. Litt.* 6 b. 294 b. 3 *Bl. Com.* 340. See *Franklaw*, *Libera lex*, *Lex terræ*, *Othesworth*.

**AMNESTY**. [Gr. ἀμνηστία, from α, not, and μνάσθαι, μνᾶσθαι, to remember.] In political law. An act of pardon, or oblivion. *Cowell*.—A public declaration or proclamation that all acts against the established authority shall be forgotten and pardoned. *Hume's Essays*, part ii., essay 11.—A declaration of the person or persons who have newly acquired or recovered the sovereign power in a state, by which they pardon all persons who composed, supported or obeyed the government which has been overthrown. *P. Cyclopaedia*.

**AMONT**, *Amount*, *A mount*. L. Fr. Upwards, above. See *Paramount*.

**AMORTIR**. L. Fr. [from *mort*, dead.] To alien in mortmain; to amortise. L. Fr. *Djct.*

**AMORTISE**, *Amortize*. [L. Fr. *amortir*, L. Lat. *amortizare*.] In English law. To alien or convey lands in mortmain; to convey to a corporation. *Stat.* 37 *Edw. I.*, st. 2. *Stat.* 15 *Ric. II.*, c. 5. 2 *Bl. Com.* 272. *Shelford on Mortmain*, 36. *Cowell*. See *Mortmain*.

**AMORTISEMENT**. [L. Fr. *amortissement*; L. Lat. *amortizatio*.] The alienation of lands or tenements in mortmain; sometimes called *amortization*, (q. v.) See *Mortmain*.

**AMORTIZATIO**. L. Lat. [from *amortizare*.] Alienation in mortmain; amortization, or amortisement. *Spelman*.

**AMORTIZATION**. The same as *amortisement*, (q. v.)

**AMOTIBILIS**. L. Lat. [from *amovere*, q. v.] Amoveable; that may be amoved, or removed. *Amotibiles et non perpetui*. *Bract.* fol. 12 a.

**AMOTION**. [Lat. *amotio*, from *amovere*, to amove, move from, remove or displace.] A putting or turning out; dispossession of lands. Ouster is an *amotion* of possession. 3 *Bl. Com.* 199, 208.

A moving or carrying away; the wrongful taking of personal chattels. *Archb. Civ. Pl.* Introd. ch. 2, sect. 3.

The removal of an officer or member of a corporation. 2 *Salk.* 436. 1 *Str.* 640. 2 *Burr.* 723, 732. 2 *Kent's Com.* 297, 298. Properly, the removal of an officer, disfranchisement being the term applied to members. *Angell & Ames on Corp.* 404, ch. 12. *Willcock on Mun. Corp.* 270. See *Amovere*.

**AMOVE**. [Lat. *amovere*, q. v.] To move from, remove; to take off or away; to withdraw. See *Amovere*.

**• AMOVEAS MANUS**. L. Lat. [L. Fr. *ouster le main*.] In old English practice. (You remove the hands.) The judgment against the crown on a *monstrans de droit*, or petition *de droit*, that the possession of the lands claimed be restored to the demandant; so called from the emphatic words, *quod manus domini regis amoveantur*; (that the hands of the king be amoved or taken off.) 3 *Bl. Com.* 257. 4 *Steph. Com.* 38.

The name of the writ issued upon such judgment. *F. N. B.* 256, C. *Cowell*, voc. *Ousterlemayn*.

The title of the statute 29 Edward I. 2 *Reeves' Hist. Eng. Law*, 241.

**AMOVERE**. Lat. [from α, from, off, or away, and *movere*, to move.] To remove; to put out of office. *Si male [tutor] gesserit, amoveri poterit*; if the guardian have misconducted, he may be removed. *Bract.* fol. 14 b. *Amotus, amoti*; removed. *Debite amoti*; duly removed. 1 *Salk.* 436.

**AMPLIARE**. Lat. [from *amplus*, large.] To enlarge or extend. *Boni est judicis ampliare jurisdictionem*. It is the part of a good judge to enlarge (or use liberally) his remedial authority. *Chanc. Prec.* 329. *Broom's Max.* 36. Bracton uses *ampliare* as the opposite of *coarctare*. *Bract.* fol. 17 b.

**AMPLIATIO**. Lat. [from *ampliare*, q. v.] In the civil law. A deferring of judgment until a cause be further examined.

*Cowell.* An order for the re-hearing of a cause on a day appointed, for the sake of more ample information. *Halifax Anal.* b. 3, c. 13, n. 32. Resembling the *ulterius concilium* (q. v.) of the English practice.

**AMPLIUS.** Lat. More; more completely, more absolutely. *Quod semel meum est amplius meum esse non potest.* That which is once mine cannot be more completely mine. *Co. Litt.* 49 b. *Shep. Touch.* 212. 2 *Bl. Com.* 314. This maxim is employed by Blackstone to illustrate the old doctrine that livery of seisin, where a freehold remainder was created after a particular estate for years already in being, must not be made to the lessee for years, he being already in possession, but to the remainder-man.

**AMTRUSTIO.** See *Antrustio*.

**AMY, Ami.** L. Fr. [Lat. *amicus*.] A friend. See *Alien amy*, *Prochien amy*.

One who is next of blood, or kin. *Litt.* sect. 123. *Co. Litt.* 88 a. See *Cousin*.

**AN, Ane, Aenne.** Sax. A, one, single or sole. *Spelman*.

**AN, Ann, Anne.** L. Fr. [from Lat. *annus*.] A year. *De an en an*; from year to year. *Britt.* c. 41. *Ann* is a title in *Comyn's Digest*.

**AN ET JOUR.** L. Fr. A year and a day. *Le an et le jour.* *Britt.* c. 5. *Un an et un jour.* *Id.* See *Year and day*.

**AN, JOUR ET WAST.** L. Fr. Year, day and waste. *Termes de la ley.* See *Year, day and waste*.

**ANATOCISM.** [Lat. *anatocismus*, Gr. *ἀνατόκισμος*, from *ἀνα*, again, and *τόκος*, interest.] In the civil law. Repeated, or doubled interest; compound interest. *Cod.* 4. 32. 1. 30.

**ANCESTOR.** [L. Fr. *auncestre*; L. Lat. *antecessor*, from *antecedere*, to go before.] In the law of descents. One who has *gone before*, or preceded in the seisin or possession of real estate; a deceased person from whom an estate has passed to another by operation of law, in consequence of his decease.\* The person last seised of an estate of inheritance, and from whom such estate is transmitted by descent to the heir.\* 2 *Bl. Com.* 200, 208. 1 *Steph. Com.* 218. See *Antecessor*, *Predecessor*, *Ascendant*.

It is said in the old books, that the word

*ancestor*, in the forensic sense, was not properly applied to the ancestor of a family, but either to the pre-possessor of an estate, or the predecessor in an office. *Termes de la ley*. It seems to have originally been, like its correlative *heir*, strictly a *nomen juris*, though it acquired the popular sense in which it is now used, at a very early period. *Richardson's Dict.* Its technical meaning was very significantly expressed by its Latin form, (*antecessor*, q. v.); but it appears from Bracton that even the latter word had begun to be used in his time, in senses not strictly appropriate, as where it was employed to denote a *living* person. *Bract.* fol. 67. A similar misapplication of the word *ancestor* sometimes occurs in modern law; an instance of which is furnished by the recent English statute for the improvement of the law of inheritance, in which "descent" is defined to be "the title to inherit land by reason of consanguinity, as well where the heir shall be an ancestor, or collateral relation, as where he shall be a child or other issue." *Stat. 3 & 4 Will. IV.*, c. 106. 1 *Steph. Com.* 357, note (b). *Ancestor* is here used in the sense of a living person in the ascending line of kindred, and in such connexion with the word *heir* as to confound the established relation between the terms. *Ancestor* and *heir*, are, in law, strictly the correlatives of each other, having a fixed meaning, and not admitting of being interchangeably or indifferently applied, as between two given persons. An ancestor is a deceased person from whom an estate has passed, just as an heir is the living person to whom it has passed; nor can the same person properly be said to stand in the relations both of ancestor and heir to another. That *ancestor* imports, *ex vi termini*, a deceased person, seems to be settled by the maxim which fixes the meaning of *heir*: *Nemo est hæres viventis*. (q. v.) See *Heir*, *Descent*.

**ANCESTRAL, Ancestrel.** [L. Fr. *auncestrel*.] Relating to ancestors, or to what has been done by them; as *homage ancestrel*, (q. v.)

Derived from ancestors. Ancestral estates are such as are transmitted by descent, and not by purchase. 4 *Kent's Com.* 404. 2 *Hilliard's Real Prop.* 160, 197, 204.

**ANCIENT DEMESNE.** [L. Fr. *auncien demeyne*; L. Lat. *antiquum dominicum, vetus patrimonium domini*.] In English law. A species of copyhold tenure existing in certain manors which, though now perhaps granted out to private subjects, were actually in the hands of the crown in the time of

Edward the Confessor, or William the Conqueror, and so appear to have been by Domesday Book, in which they were entered.\* 1 *Steph. Com.* 211. 2 *Bl. Com.* 99. 1 *Crabb's Real Prop.* 713, § 924. *Hob.* 188. 4 *Inst.* 269. It seems to have been originally a species of villein socage; the tenants being the same with those who are described by Bracton as *glebæ ascripticii*, (q. v.) *Bract.* fol. 209. See *Id.* fol. 7. It is called *ancient demesne*, as having been peculiar to the demesnes or manors of the crown, from a very early period, that is, at or before the conquest; (*ante conquestum, in conquestu*). *Id. ibid.* See *Demesne*.

**ANCIENT HOUSE.** In the law of estates. A house which has stood so long as to acquire the privilege of support from the land of another adjoining it; so that the owner of the latter cannot excavate his ground to its injury. This right of *support* is a species of easement or privilege in the lands of another. See *Easement, Support*. 1 *Crabb's Real Prop.* 416, § 500. 3 *Kent's Com.* 437, note. *Gale & Whalley on Easements*, 216-267. In England, if a house has stood twenty years, it is now considered to have acquired the rights of an ancient house. 1 *Crabb's Real Prop.* 417, § 501. 1 *Ad. & Ell.* 493.

**ANCIENT LIGHTS, or WINDOWS.** In the law of estates. Lights or windows in a house, which have been exclusively enjoyed, without interruption, for twenty years and upwards. To these the owner of the house has a right by prescription or occupancy, so that they cannot be obstructed or closed by the owner of the adjoining land which they may overlook.\* 1 *Crabb's Real Prop.* 387, § 452. 3 *Kent's Com.* 448. 2 *Bl. Com.* 402. *Stat. 2 & 3 Will. IV.*, c. 73, s. 3. This doctrine of ancient lights, or "servitude of light or prospect," as it is called in the civil law, is recognised in several of the United States, though in some of the states it has been questioned. 12 *Mass. R.* 157, 220. 1 *Dudley's S. C. Rep.* 131. 1 *Green's N. J. Ch. Rep.* 57. 19 *Wendell's R.* 309. 2 *Watts' R.* 331. 10 *Alabama Rep.* 63. 2 *Kent's Com.* 448. 2 *Hilliard's Real Prop.* 81.

**ANCIENT READINGS.** Readings or lectures upon the ancient English statutes, formerly regarded as of great authority in law. *Litt.* sect. 481. *Co. Litt.* 280. Lord Coke has very graphically contrasted these with the later, or new readings. *Id. ibid.*

**ANCIENT WRITINGS.** In evidence.

Deeds, wills, leases and other instruments more than thirty years old. 1 *Phillips' Evid.* 477. *Cowen & Hill's note, in loc.*

**ANCIENTS.** In English law. A title given to certain members of the Inns of court and chancery. *Cowell. Holthouse. Wharton.* Serjeants were distinguished as *ancient* and *puisne*. *Cro. Jac.* 2, 671.

**ANCIENTRY.** [L. Fr. *anciennete*.] In old English law. Seniority, or esnecy, (q. v.) *Stat. Hibern.* 14 *Hen. III.* *Cowell.*

**ANCILLARY.** [L. Lat. *ancillaris*, from *ancilla*, a hand-maid.] Attendant upon; subservient to; auxiliary; subordinate; dependent. An appointment is said to be *ancillary* to the former deed containing the power of appointment. 1 *Steph. Com.* 507. An administration is said to be *ancillary*, where it is taken out in the country where the assets are locally situate, and is subordinate to the original administration. 1 *Story's Eq. Jur.* § 583. "It is beneath the dignity of the king's courts to be merely *ancillary* to other inferior jurisdictions." 3 *Bl. Com.* 98. Lord Hobart says of a clause beginning with a *videlicet* or *scilicet*, that it "is a *clausula ancillaris*, a kind of hand-maid to another clause, and to deliver her mind, not her own. And therefore it is a kind of interpreter; her natural and proper use is to particularize that that is before general, or distribute that that is in gross, or explain that that is doubtful or obscure." *Hob.* 172.

**AND**, in written instruments, is frequently construed to mean *or*, where reason and the intent of the parties require it. Thus, where A. covenanted with B., to renew a lease for years of land to him *and* to his assigns at such a time, it was held that this should be construed "to him *or* to his assigns"; so that if B. died before the time, the lease should be made to his assigns, that is, his executors, alone. *Plowd.* 284, 289. See 1 *Wendell's R.* 388. So, in wills, a like construction is frequently adopted to give effect to all the words, and to the intention of the testator. 3 *Vesey, Jr.* 450. 7 *Id.* 453. A similar rule of construing the conjunctive particle in a disjunctive sense, prevailed in the civil law. *Sæpe ita comparatum est, ut conjuncta pro disjunctis accipiantur.* *Dig.* 50. 16. 53.

**ANDIGAVIA.** L. Lat. Anjou in France. *Magna Charta*, in pr.

**ANDROLEPSIA.** [Gr. *ἀνδροληψία*, from *ἀνθρωπος*, a man, and *λήψις*, a taking.] A term anciently applied to the *taking* by one

nation of the *citizens* or subjects of another, for the purpose of enforcing some claim of right; as to compel the surrender or punishment of a murderer who had fled from one country to another. *Molloy de Jur. Marit.* 26, 28.

ANECIUS, *Enecius*, *Enetius*. L. Lat. [L. Fr. *aisné*.] The eldest or first born. *Spelman*, voc. *Aesneia*. See *Aesneia*, *Enecy*, *Enitius*.

ANGARIA. L. Lat. [Gr. ἀγγαρία, from ἀγγαγος, one sent or compelled to go.] In feudal law. That which is exacted by a superior beyond what is due, (*id quod præter debitum exigitur*.) *Spelman*. An onerous or vexatious service required from a tenant by his lord. *Cowell*. *Blount*. Otherwise derived from the Fr. *angurie*, personal service, that which a man is bound to perform in his own person. *Id.* *Angaration* is used as an English word by old writers. *Richardson's Dict.*

ANGILD, *Angeld*. Sax. [from *an*, one, and *gild*, a payment or satisfaction; L. Lat. *angildum*, *angildus*.] In Saxon law. The single value of a man, or other thing, (*simplex valor hominis aut rei alicujus*); a single weregild, (*weregildum simplex*); the compensation of a thing according to its single value or estimation. *Spelman*. The double gild or compensation was called *twigild*, the triple, *trigild*, &c. *Id.* *LL. Inæ*, c. 20, cited *ibid.* See *Gild*, *Geld*.

ANGLETERRE. See *Engleterre*.

ANGLICÉ. Lat. In English. A term anciently used in pleading, where a thing was described both in Latin and English; the Latin word being first given, and then the English, preceded by the word *Anglicé*, thus: *Quare cepit decem velamina*, *Anglicé* coifs; *pileum*, *Anglicé* a cap; *quatuordecem colores*, *Anglicé* neck-bands; *cruralia*, *Anglicé* garters, &c. *Sti.* 125. *Towns. Pl.* 16, 101. *De quadam ripa*, *Anglicé* a dam. *Hob.* 193.

The pleadings in actions were formerly in Latin, that the records might be kept forever without changing; and therefore it was necessary that there should be proper Latin words to express the cause of action, or a proper periphrasis, or a proper Latin description containing sufficient certainties; but if there were no proper Latin words to express the thing, it was sufficient to form the word under a Latin termination, (or, in other words, to coin a Latin word,) and ex-

plain it by an *Anglicé*. So, where the Latin word was equivocal, and signified more things than one, it might be fixed down by an *Anglicé*. *Gilb. Com. Pleas*, 126. And it was a rule that an *Anglicé*, (which was but a *videlicet*, or "that is to say,") should never exceed the Latin. *Hob.* 172 a.

ANHLOTE, *Anlote*, *Anlot*. Sax. [from *an*, one, or own, and *hlote*, a portion, or share.] In Saxon law. One's own portion; an individual tax; a share in a general tax. *Anlote* and *Anscote* is mentioned in a law of William the Conqueror, as a customary tax or payment of the Anglo-Saxons, to which every one contributed. *Spelman*. *Lambard* supposes this to be the same with what was commonly called *scot and lot*. *Id.* See *Lot*, *Scot*, *Scot and lot*.

ANICHILÉE. L. Fr. [from Lat. *nichil*, or *nihil*, nothing.] Made void or nought; annulled; anichiled or *adnichiled*. *Kelham*. See *Adnichilare*.

ANIENT, *Aniente*, *Anyent*. L. Fr. Void; of no force or effect; made void or taken away; defeated; barred; annulled. *Litt. sect.* 741. *L. Fr. Dict.*

ANIENTER, *Anientir*, *Anyentir*, *Aneantir*. L. Fr. To make void, or annul; to take away, or destroy; to defeat; to bar. *Kelham*.

ANIENTISEMENT. L. Fr. Destruction; waste; diminution; annulling. *Id.*

ANIMO. Lat. [abl. of *animus*, q. v.] With the intention or design. *Quo animo*; with what intent. *Considerandum est quo animo, quæ voluntate quid fiat*; it is to be considered with what intent, or with what will a thing is done. *Bract.* fol. 101 b. This is a very common expression in the books. 8 Co. 290. 1 *Kent's Com.* 77.

*Animo cancellandi*; with the intention of cancelling. 1 *Eq. Cas. Abr.* 409, pl. 3. 1 *Powell on Devises*, 603.

*Animo felonico*; with felonious intent. *Hob.* 134.

*Animo furandi*; with the intention of stealing. *Bract.* fol. 150 b.

*Animo lucrandi*; with the intention of gaining, with the view to gain or profit. *Inst.* 2. 1. 16. *Bract.* fol. 9 a. 2 *Kent's Com.* 357.

*Animo manendi*; with the intention of remaining. 1 *Kent's Com.* 76.

*Animo republicandi*; with the intention of re-publishing. 1 *Powell on Dev.* 609.

*Animo revertendi*; with the intention of returning. 1 *Kent's Com.* 78.

*Animo revocandi*; with the intention of revoking. Lord Mansfield, C. J., *Cowp.* 52. 1 *Powell on Dev.* 595.

*Animo et corpore*; by the mind, and by the body; by the intention, and by the physical act. *Dig.* 50. 17. 153. *Id.* 41. 2. 3. 1.

ANIMUS. Lat. Mind; will; disposition; intention or design. *Animo*, (q. v.); with the intention or design. These terms are derived from the civil law.

*Animus hominis est anima scripti*. The intention of the party is the soul of the instrument. 3 *Bulstr.* 67. *Pitman, Princ. & Surety*, 26. In order to give life or effect to an instrument, it is essential to look to the intention of the individual who executed it.

Few maxims have been expressed in briefer and more comprehensive language than this; but its point and force, consisting in the use of *animus* and *anima*, in their appropriate senses, are lost in most of the translations which have been given of it.

ANIMUS CANCELLANDI. L. Lat. The intention of cancelling. See *Animo cancellandi*.

ANIMUS DONANDI. Lat. The intention of giving. *Non valet donatio nisi tam dantis quam accipientis concurrat mutuus consensus et voluntas; sc. quod donator habeat animum donandi, et donatorius animum recipiendi*; a gift is not valid unless there be a concurrence of the mutual consent and will both of the giver and receiver; that is, the donor must have the intention of giving, and the donee the intention of receiving. *Bract.* fol. 15 b.

ANIMUS FURANDI. Lat. The intention of stealing. The felonious intent or design, which is necessary to make the taking of the property of another, theft or larceny. *Bract.* fol. 150 b. 4 *Bl. Com.* 232. 4 *Steph. Com.* 157.

ANIMUS LUCRANDI. Lat. The intention of gaining. See *Animo lucrandi*.

ANIMUS MANENDI. Lat. The intention of remaining; intention to establish a permanent residence. 1 *Kent's Com.* 76. This is the point to be settled in determining the domicile or residence of a party. *Id.* *ibid.* 77. See *Animus revertendi*.

ANIMUS RECIPIENDI. Lat. The intention of receiving. See *Animus donandi*.

ANIMUS REPUBLICANDI. Lat. The intention of re-publishing. 1 *Powell on Devises*, 609.

ANIMUS REVERTENDI. Lat. The intention, or disposition of returning. A term employed in the civil law, in expressing the rule of ownership in tamed animals. *In iis animalibus quæ ex consuetudine abire et redire solent, talis regula comprobata est; ut eousque tua esse intelligantur, donec animum revertendi habeant: nam si revertendi animum habere desierint, etiam tua esse desinunt, et fiunt occupantium*. *Revertendi autem animum videntur desinere habere tunc, cum revertendi consuetudinem deseruerint*; in respect to those animals which go away and return habitually, the rule is this; that they are considered as yours as long as they retain an inclination to return, but if they cease to have this inclination they cease to be yours, and become the property of any who may take them. And they may be supposed to cease to have the inclination of returning when they actually relinquish the habit of returning. *Inst.* 2. 1. 15. This rule is adopted by Bracton almost word for word, and has become a part of the modern common law. *Bract.* fol. 9 a. 7 *Co.* 16—18. *Finch, Law*, 176. 2 *Kent's Com.* 348.

This phrase is also applied to persons in modern law, in discussing questions of domicile. 1 *Kent's Com.* 78.

ANIMUS REVOCANDI. L. Lat. The intention of revoking. See *Animo revocandi*.

ANIMUS TESTANDI. L. Lat. Intention of willing; intention or purpose to make a will. *Worthington on Wills*, prel. obs.

Mind or capacity to make a will Madmen, idiots, and persons born deaf, blind and dumb, are incapable of having *animum testandi*. 2 *Bl. Com.* 497.

ANIONTES, ἀνιόντες. Gr. [from ἀνίημι, to ascend.] In the civil law. Persons in the ascending line; ascendants. *Nov.* 118, c. 2.

ANN, *Annat.* In Scotch law. Half a year's stipend, over and above what is owing for the incumbency, due to a minister's relict, child, or nearest of kin after his decease. *Whishaw. P. Cyclopaedia*, Annates. See *Ersk. Inst.* b. 2, tit. 10, §§ 65—67.

ANNATES, *Annatae*. L. Lat. [from *annus*, a year.] In English ecclesiastical law. The first year's whole profits of a spiritual preferment, anciently paid by the English clergy to the pope, but in the reign



of Henry VIII. transferred to the crown; called in modern law *first fruits*. *Spelman. Termes de la ley.* 1 *Bl. Com.* 284. See *First fruits*.

**ANNEXATION.** [L. Lat. *annezatio*, from *annectere*, to knit or join to.] The fastening of chattels to the freehold, or the letting them into it, which gives them the character of fixtures. *Grady on Fixtures*, 2, 52. 3 *East*, 38. 2 *Smith's Lead. Cas.* 99, 114. 1 *Hilliard's Real Prop.* 64, 70. See *Fixtures*.

**ANNEZ, Anz.** L. Fr. Years. *Kelham*.

**ANNI NUBILES.** Lat. In the civil law. Marriageable years; the marriageable age of woman, viz. twelve years. 2 *Inst.* 434. See *Infra annos nubile*s.

**ANNICULUS.** Lat. In the civil law. Of one year's age; a child of a year old. *Bract.* fol. 63 b. *Anniculus—trecentesimo sexagesimo-quinto die dicitur, incipiente plane non exacto die, quia annum civiliter non ad momenta temporum, sed ad dies numeramus; a person is said to be a year old, on the three hundred and sixty-fifth day [after birth], when it has clearly begun, and before it has passed, because we reckon a year civilly not by moments of time, but by days.* *Dig.* 50. 16. 134.

**ANNOISANCE.** See *Annoysance*.

**ANNONA.** Lat. [from *annus*, a year.] Corn or grain. *Spelman. LL. Edw. Conf.* c. 8. *Domesday*.

Whatever is laid up for a year's subsistence, (*quicquid in annum alimonium reconditur.*) *Spelman*.

**ANNOTATIONE PRINCIPIIS.** See *Annotatione principis*.

**Annus nec debitum iudex non separat ipsum.** A judge does not divide annuities nor debt. 8 *Co.* 52. 1 *Salk.* 36, 65. Debt and annuity cannot be divided or apportioned by a court.

A maxim of the old law, expressed in a hexameter line. See 1 *Story's Eq. Jur.* § 480.

**ANNUA PENSIONE.** See *De annua pensione*.

**ANNUATIM.** L. Lat. Annually. *Reg. Jud.* Appendix, 9.

**ANNUITY.** [L. Lat. *annuus redditus*.]

A yearly payment of a certain sum of money, granted to another in fee, for life or years, charging the person of the grantor only. *Co. Litt.* 144 b. 2 *Bl. Com.* 40. 3 *Kent's Com.* 460. In this respect it differs from a rent charge, which is chargeable upon, and issues out of land. 2 *Bl. Com.* 41. See *Com. Dig. Annuity. United States Digest, Annuity*.

The name of an action, now disused, (L. Lat. *breve de annuo redditu*), which lay for the recovery of an annuity. *Reg. Orig.* 158 b. *Bract.* fol. 203 b. 1 *Tidd's Pr.* 3. See *De annuo redditu*.

In a general sense, a yearly or stated payment of money. See *infra*.

An annuity, it is said, has been frequently confounded with a rent charge, from which it is a very distinct thing. 2 *Bl. Com.* 40. In point of fact the term *rent*, (L. Fr. *rente*, L. Lat. *redditus*), was originally employed to denote both; a rent proper, or rent charge, being called *rent* from a *tenement*, (*redditus proveniens ex tenemento*), and an annuity, *rent* from the *coffer*, (*rente de chambre, redditus proveniens ex camera*); the term *rent* itself being used in the general sense of a payment or return of any kind. *Britt.* c. 68. *Bract.* fol. 203. b. *Reg. Orig.* 158 b. *regula.* 2 *Reeves' Hist. E. L.* 258. See *Rent, Camera*. The adoption of the term *annuity* would have sufficiently expressed the distinction between these two kinds of *rents* or payments, had it not been for the phrase *annuus redditus*, by which it continued to be expressed in Latin. This is constantly translated in the old books (as by Fitzherbert from the Register) an *annual* or yearly *rent*, which probably led to the confusion spoken of by Blackstone. *F. N. B.* 152, A. B. See *Dyer*, 55 b. *Cro. Car.* 170. Lord Coke, in his definition of annuity, (*supra*), very properly gives to *redditus* its general sense of *payment*. See *Annuus redditus*.

In modern law, the distinction between the terms *rent* and *annuity* appears to be well settled. The anomalous character of an annuity itself, however, has sometimes led to confusion. Though not belonging to the class of *things real*, a man may have an estate of inheritance in it, that is, it may be made descendible to his heirs. 2 *Steph. Com.* 26. An annuity in fee is personal estate *sub modo*, and is sometimes called a personal fee. 3 *Kent's Com.* 460, and note.

**ANNULUS ET BACULUS.** L. Lat. In feudal and ecclesiastical law. Ring and staff. Symbols anciently used in feudal investitures, the ring being the symbol or

earnest of faith, the staff, of aid or support, by which the vassal was bound to his lord; (*annulus arra fidei, baculus subsidii, quibus domino suo tenetur beneficiarius, seu vassalus.*) *Spelman*, voc. *Investire*. Hence was derived the practice of granting ecclesiastical investitures in England, *per annulum et baculum*, by ring and crozier, or pastoral staff. *Id. ibid.* 1 *Bl. Com.* 378, 379.

**ANNUS.** Lat. A year. *Bract.* fol. 359 b. *Annus est mora motus quo suum planeta pervolvat circulum*; a year is a period of motion in which a planet revolves through its circle or orbit. *Id. ibid.* The first edition of Bracton has *summum* instead of *suum*, which it gives as another reading. The same author divides the year into various kinds, as *major, minor, solaris, lunaris, artificialis, naturalis*, and *usualis*, (qq. v.) See *Year*.

**ANNUS ET DIES.** L. Lat. [L. Fr. *an et jour*.] A year and a day; a well known period of time in ancient and modern law. *Nos non tenebimus terras illorum qui convicti fuerunt de feloniam nisi per unum annum et unum diem, &c.*; we will not hold the lands of those who have been convicted of felony longer than for a year and a day. *Magna Charta*, c. 22. *Co. Litt.* 254 b. See *Year and day*.

This peculiar limitation of time is supposed by *Spelman* to be of German origin, and is mentioned in the Book of Feuds, and in the laws of the Lombards. In an ancient formula given by *Lindenbrog* for the sale of a slave, the following clause occurs: *in omni corpore scimus eum sanum usque anno et die*; we know (warrant) him to be sound in his whole body for a year and a day. *Formul. Lindenbrog.* 142. *Spelman*. The custom of warranting for a year and a day is still observed. See more under *Year and day*.

**ANNUS LUCTUS.** Lat. In the civil law. A, or the year of mourning. The year following a husband's death, during which his widow was required to remain unmarried. *Cod.* 5. 9. 2. 1 *Bl. Com.* 457. See *Infra annum luctus*.

**ANNUUS REDDITUS, or REDITUS.** L. Lat. An annuity; a yearly rent or payment. *Quæ ei a retro sunt de annuo redditu*; which are in arrear to him of an annuity. *Reg. Orig.* 158 b. *De arrearagiis cujusdam annui redditus*; of the arrears of a certain annuity. *Reg. Jud.* 43. See *De annuo redditu*.

**ANOYER, Anyer, Ennoyer.** L. Fr. To

hurt; to trouble, offend or annoy. L. Fr. *Dict. Britt.* c. 61.

**ANOYSANCE, Noysance, Anisance, Aynisans.** L. Fr. [from *anoyer*, or *anyer*, q. v.] Annoyance, nuisance. *Stat. 22 Hen. VIII.*, c. 5. *Cowell. Kelham.* See *Nuisance*.

**ANS, ANZ.** L. Fr. Years. *Kelham. L. Fr. Dict.*

**ANSEMENT.** See *Ensement*.

**ANSWER.** In pleading. In a general sense, any pleading, (except a demurrer, by which the party claims that he is not bound to answer,) framed to meet a previous pleading.

In equity pleading. The most usual form of defence made to a bill in equity; being the defendant's answer in detail, and usually under oath, to the charges which the complainant has made against him in his bill. 3 *Bl. Com.* 446. 4 *Steph. Com.* 22. *Mitford's Chanc. Pl.* 357, [306.] 2 *Daniell's Chanc. Pr.* 813. 1 *Barbour's Chanc. Pr.* 130.

**ANTE.** Lat. Before. Usually employed in old pleadings as expressive of time, as *præ* (before) was of place, and *coram* (before) of person. *Towns. Pl.* 22.

**ANTE EXHIBITIONEM BILLÆ.** L. Lat. Before the exhibition of the bill. A phrase formerly used in pleading. See *Exhibitio billæ*.

**ANTE LITEM MOTAM.** L. Lat. Before controversy or dispute moved, or commenced. *Mascardus de Prob.* 420, n. 4, 5. *Hubback's Evid. of Succession*, 244, 245, 664. See *Lis mota*.

**ANTECEDENS.** Lat. [from *antecedere*, to go before.] Going before, antecedent.

**Ad proximum antecedens fiat relatio,** (q. v.) Relation or reference should be made to the last antecedent.

**Ex antecedentibus et consequentibus fit optima interpretatio.** 2 *Inst.* 317. The best interpretation [of a clause in an instrument] is made from the antecedents and the consequents [of such clause]; from the parts which precede and those which follow it; that is, by taking all the parts of the instrument together. The proper mode of construing an instrument is by looking at the whole, and not merely to particular parts.\* 2 *Bl. Com.* 379. *Hob.* 275. *Broom's Max.* 249.

**ANTECESSOR.** L. Lat. [from *antece-*

*dere*, to go before.] In old English law. An ancestor; one who goes or has gone before another, in the possession of an estate; one who goes before an heir. Antecessores—*qui mortui sunt et hæredes antecedunt*, i. e., cedunt ante, et hæredes cedunt eis sub, quasi succedunt; ancestors—who are dead, and precede the heirs, i. e., they go before, and the heirs go after, or succeed them. *Bract.* fol. 67. See *Id.* fol. 281. *Assisa mortis antecessoris*; assise of mort d'ancestor, (q. v.) *Id.* lib. 4, tract. 3.

In the Roman law. A title corresponding with teacher or professor of law. *Inst. procem.* § 3.

**ANTEJURAMENTUM.** L. Lat. In Saxon law. A preliminary or preparatory oath, (called also *præjuramentum*, and *juramentum calumnie*, q. v.) which both the accuser and accused were required to make before any trial or purgation; the accuser swearing that he would prosecute the criminal, and the accused making oath on the very day that he was to undergo the ordeal, that he was innocent of the crime with which he was charged. *Whishaw. Leg. Athelstan, apud Lambard, cited ibid.*

**ANTENATI.** L. Lat. [plur. of *antennatus*, q. v.] Persons born before; that is, before a particular period or event. This term, with its opposite or correlative, *postnati*, is used both in English and American law.

**ANTENATUS.** L. Lat. [from *ante*, before, and *natus*, born.] Born before; that is, before another person. In this sense, this term is of frequent occurrence in Bracton, being used with its correlative *postnatus*, (after born,) to distinguish sons or brothers born at different periods. *Si frater antenatus [donationem fecerit] fratri suo postnato*; if an elder brother make a gift to his after born brother. *Bract.* fol. 33, lib. 2, c. 15. See *Id.* cc. 16, 30.

Born before a particular period, or event. In this sense, the term (especially the plural *antenati*,) has acquired much celebrity in modern law, being employed to denote the subjects of Scotland born before the union of the crowns; and Americans and British subjects born in the United States before the declaration of independence. 7 Co. 1, Calvin's case. 2 Kent's Com. 40, 56, 58. 4 Cranch R. 321. 3 Peters' R. 99.

**ANTIGHRESIS.** Lat. [from Gr. ἀντιχρησις; from ἀντι, opposite, and χρησις, use.] In the civil law. A sort of mortgage, in which the right of reaping the fruits, or

taking the profits of the thing pledged, was by special agreement transferred to the mortgagee, in lieu of drawing interest; [he having the use by way of compensation.] Dig. 20. 1. 11. 1. 1 Mackeld. Civ. Law, 383, § 348. 4 Kent's Com. 137, note. Story on Bailments, § 344.

This kind of mortgage is still in use in some countries, where the civil law prevails; and it is expressly recognized by the laws of the State of Louisiana, but in general it has become obsolete. *Id. ibid. Civil Code of Louisiana*, art. 3143. 11 Peters' R. 351. The modern Welsh mortgage closely resembles it. See *Welsh mortgage*.

**ANTIER.** See *Entier*.

**ANTINOMY.** [Gr. ἀντινομία, from ἀντι, opposite, and νόμος, law.] In the civil law. An opposition, contradiction, or inconsistency of laws. "The antinomies, or contradictions of the Code and Pandects, still exercise the patience and subtlety of modern civilians." 3 Gibbon's Rom. Emp. 165, (Am. ed.)

**ANTIQUA STATUTA.** See *Vetera Statuta*.

**ANTIQUITAS.** Lat. [from *antiquus*, ancient.] In the civil law. Ancient or former law, or practice. *Inst.* 1. 6. 7. *Modus alius antiquitati placuit, alium novitas per usum amplexa est*; the ancient law adopted one mode, modern practice has established another. *Id.* 4. 11. pr. Literally, *antiquity*; which is the term constantly used by Lord Coke and other writers, to denote the same thing.

**ANTISTITIUM.** L. Lat. A monastery. *Blount. Whishaw.*

**ANTITHETARIUS.** L. Lat. [from Gr. ἀντιθεσις, opposition?] A term applied in ancient law to one who endeavored to discharge himself of a fact of which he was accused, by recriminating, or charging his accuser with the same fact. *Cowell. Whishaw.*

**ANTOR.** See *Entour*.

**ANTRUSTIO, Amtrustio.** L. Lat. In early feudal law. A term applied to the followers or dependents of the ancient German chiefs, and of the kings and counts of the Franks. It occurs in the formularies of Marculfus, and imported the same with what was called in the Salic laws, *homo in truste dominica*, (a man in his lord's trust,

or one who had sworn faith to his lord.) *Marculf. Form. lib. 1, c. 18. L. Salic. tit. 43, § 4. Spelman, voc. Amtrustio. Esprit des Loix, liv. 30, c. 16. 1 Robertson's Charles V., Appendix, note viii.*

ANUELS LIVRES. L. Fr. The year books. *L. Fr. Dict. See Year books.*

AORE. L. Fr. Now. *L. Fr. Dict. See Ore.*

AOUR. L. Fr. Gold. *Kelham. See Oor.*

APANAGE, *Appanage*. [L. Lat. *appanagium, appenagium*, q. v.] In old French law. A provision for the support of younger sons; an allowance made to younger branches of a sovereign house, out of the revenues of the country, generally together with a grant of public domains; the provision of lands or feudal superiorities formerly assigned by the kings of France for the maintenance of their younger sons. *Spelman, voc. Appenagium. Brande. P. Cyclopaedia.*

APARELLE, *Aparaile, Appareillie*. L. Fr. Ready. *Kelham.*

APARES. See *Appares*.

APARTE. See *Apert*.

APARTEMENT. See *Apartment*.

ἈΠΑΤΟΡΕΣ, Ἀπάτορες. Gr. [from *a*, without, and *πατήρ*, a father.] In the civil law. Persons without a father; spurious children; bastards, (*quasi sine patre filii*.) *Inst. 1. 10. 12.*

APENT. See *Appent*.

APERCEYVER. L. Fr. To perceive. *Britt. c. 40.*

APERTE, *Aparte*. L. Fr. [from Lat. *apertus*, q. v.] Open, plain. *Kelham.*

APERTMENT, *Aperment, Apartement*. L. Fr. Openly, plainly. *Apartment escries*; openly defamed. *Stat. Westm. 1, c. 15.*

APERTUS, *Apertum*. Lat. [from *aperire*, to open.] Open or patent. Applied by Bracton to writs, though *patens* was the more usual epithet. *Si fuerit [breve] patens sive apertum; quia originalium [breuium] quædam aperta, quædam clausa*; if the writ be patent or open; because of original writs some are open, some close. *Bract. fol. 418 b.*

APEYNE. L. Fr. Scarce. *Kelham.*

APEX JURIS, (plur. APICES JURIS.) L. Lat. An extreme point or subtlety of law; a rule or doctrine of law, carried to an extreme either of rigor or refinement; an unnecessarily rigid adherence to the letter; the *strictum* or *sumum jus*. Lee, C. J., 1 *Burr.* 341, 349. Kent, C. J., 2 *Caines' R.* 117. Story, J., 2 *Story's R.* 143. *Apices litigandi*; subtleties of litigation; sharp technical points, or captious objections in pleading or practice. "It is unconscionable in a defendant, to take advantage of the *apices litigandi*, to turn a plaintiff round, and make him pay costs where his demand is just." Lord Mansfield, C. J., 3 *Burr.* 1243.

*Apices juris non sunt iura* [jue.] Extremities, or mere niceties of law are not rules of law, [are not law.] *Co. Litt.* 304 b. 10 *Co.* 126. *Wingate's Max.* 19, max. 14. *Broom's Max.* 88. This maxim, however, is not understood as prohibiting the allowance of all technical objections. *Id. ibid.*

The common translation of this maxim,— "points of law are not laws"—is very far from expressing its proper meaning; the figurative term *apex* being obviously intended to convey the ideas of extremity, sharpness and fineness, drawn from natural objects, which are by no means implied by the word *point*, according to its usual legal acceptance. A *point of law* (that is, a position, proposition or doctrine contended for, or actually established,) may be an *apex juris*, but is far from being necessarily or generally so. The great body of the law is in fact made up of *points*, but is marked by only a few *apices*, which stand upon its outer verge, and are only rarely resorted to.

APOCHA. L. Lat. In the civil law. An acquittance or discharge upon the payment of money. *Spelman, voc. Acquietancia.*

APOI, *Apoy*. L. Fr. Almost; scarcely. *Kelham.*

APOINCTER. L. Fr. To appoint or direct. *Id.*

APOSTACY. In English law. The total renunciation of Christianity, by embracing either a false religion, or no religion at all. This offence can only take place in such as have once professed the Christian religion. 4 *Bl. Com.* 43. 4 *Steph. Com.* 231.

APOSTARE. L. Lat. In Saxon law. To violate or transgress, *Qui leges apostata*

*bit*; whoever shall violate the laws. *LL. Edw. Conf.* c. 35. *Spelman*. Sometimes confounded with *apostatate*, to apostatize. *Id.* See *Laghsliit*.

**APOSTATA CAPIENDO.** See *De apostata capiendo*.

**APOSTILER.** L. Fr. To write notes on. *Kelham*. See *Apostille*.

**APOSTILLE, Appostille.** L. Fr. An addition, note or observation. *Kelham*.

*Apostill*, *appostill*, and *apostyle* are used in old English writers in the sense of a marginal note, an answer to a petition or other writing, set down in the margin; and have been derived from the Lat. *apponere*, because placed to the text in the margin. *Richardson's Dict.* But *quære* if the word be not radically the same with *apostles*. See *infra*.

*Apostille*, (q. v.) is still used in French law.

**APOSTLES.** [Lat. *apostoli*, from Gr. ἀποστέλλω, to send from.] In civil and admiralty law. Letters dismissory, addressed by a court from which an appeal is taken, to the superior court, for the purpose of certifying the appeal. *Spelman*, voc. *Apostoli*. Short letters dismissory, signed by the judge *a quo*, stating shortly the case and the sentence, and in the room of further apostles, declaring he will transmit all the proceedings. 2 *Bro. Civ. Law*, 438, ch. 9. Letters missive, transmitted to the judge *ad quem*, to instruct him in the nature of the suit. *Hulifax Anal.* b. 3, c. 11, n. 34. See *Apostoli*.

This term is still sometimes applied in the admiralty courts of the United States, to the papers sent up or transmitted on appeals.

**APOSTOLI.** Lat. [from ἀποστέλλω, to send from.] In the civil law. *Post appellationem interpositam, litteræ dandæ sunt ab eo a quo appellatum est, ad eum qui de appellatione cogniturus est, quas litteras dismissorias sive apostolos vocant*; after an appeal is interposed, letters are to be given by him from whom the appeal is taken, to him who is to judge of the appeal, which they call letters dismissory, or *apostles*. *Dig.* 49. 6.

**APPANAGIUM.** L. Lat. [from *ad*, to, and *panagium*, sustenance, from *panis*, bread.] An appanage or apahage; a provision for the support of younger sons. See *Appanage*. Sometimes written *appenagium*, which *Spelman* approves.

**APPARATOR.** L. Lat. [from *apparare*, to prepare, furnish or provide.] One who provides or furnishes. A sheriff was formerly styled in England *apparator comitatus*, as having charge of certain county arrangements and expenditures; and considerable yearly sums were sometimes allowed him in that capacity. *Cowell*. In the United States, sheriffs often act in a similar capacity.

**APPARENS.** Lat. [from *apparere*, to appear.] Apparent, appearing; that which appears, or is regularly before a court. *De non apparentibus et non existentibus eodem est ratio*. Respecting things which do not appear, and things which do not exist, the rule, reasoning, or mode of treatment is the same. 5 *Co. v.*, Caudrey's case. Things which do not appear are treated in law the same as if they did not exist. *Broom's Max.* 70. Where the court cannot take judicial notice of a fact, it is the same as if the fact had not existed. *Buller, J.*, 1 *Term R.* 404. Thus, on a writ of error, for error in law, the court will not look out of the record. *Steph. Pl.* 121. So, on a special verdict, they will neither assume a fact not stated therein, nor draw inferences of facts necessary for the determination of the case from other statements contained therein. 5 *Co. v.* 8 *Cowen's R.* 600, 682. 1 *Caines' R.* 60. 5 *Hill's R.* 634. 1 *Archb. Pr.* 215. 12 *M. & W.* 316. *Broom's Max. ub. sup.* See *Apparere*, *Appear*.

**APPARENT HEIR.** In English law. One whose right of inheritance is indefeasible, provided he outlive the ancestor. 2 *Bl. Com.* 208. See *Heir*.

In Scotch law. One who is entitled to enter heir to a deceased ancestor, before actual entry. *Ersk. Inst.* b. 3, tit. 8, § 54. 1 *Forbes' Inst.* part 3, b. 2, ch. 3.

**APPARENTIA.** L. Lat. [from *apparere*, q. v.] In old practice. An appearance. *Rast. Entr.* 347. See *Comparentia*.

**APPARERE.** Lat. To appear; to be regularly before a court, as a fact, an instrument, or other thing of which they are requested to take notice. See *Constatere*. *Quod non apparet non est*. That which does not appear, does not exist. 2 *Inst.* 479.

To be regularly before or in a court, as a defendant in an action. *Comparere* was the term more usually employed in this case.

**APPARES, Apares.** Lat. [quasi *adpares*, from *ad*, to, and *pares*, equals.] In ca-

non law. Peers, or compeers, (*compares*;) equals, associates. *Spelman*.

APPARITIO. L. Lat. [from *apparere*, q. v.] In old practice. An appearance. *Apparitio in judicio*; an appearance in court. *Bract. fol. 344.*

APPARITOR. L. Lat. [from *apparere*, q. v.] In ecclesiastical law. One who cites or summons to *appear*, a summoner; a messenger who cites offenders to appear in the spiritual court, and serves the process of the court. *Cowell*.

APPAROIR, *Apparoer, Apparoier*. L. Fr. To appear, to make known. *Kelham*.

APPARURA. L. Lat. [from *apparare*, to furnish.] Furniture, tackle or apparel. *Curucarum apparura*; plough tackle. *Cowell*.

APPAYE, *Appay, Apay*. L. Fr. Satisfied; contented. *Id.*

APPEAL. [Lat. *appellatio*, from *appellare*, Fr. *appeller*; to call to, or upon.] In practice. The complaint to a superior court of an injustice done, or error committed by an inferior one, whose judgment or decision the court above is called upon to correct, or reverse. The removal of a cause, or of some proceeding in a cause, from an inferior to a superior court, for the purpose of re-examination or review.

An appeal, in the most general sense, embraces the proceedings by writ of error and *certiorari*, but strictly and practically it is distinct from both. 3 *Bl. Com.* 55, 454. See *Certiorari*, *Writ of Error*. In its technical sense, it is peculiar to courts of equity, and other courts which proceed according to the course of the civil law; the judgments of courts of common law being removed by writ of error. An appeal removes a cause entirely, subjecting the fact as well as the law to a review and re-trial; a writ of error removes nothing for re-examination but the law. *Story on the Constitution*, (Abr.) § 917. See *Federalist*, No. 81. *United States Digest*, Appeal,

APPEAL. [Fr. *appel*.] In old French law. A mode of proceeding in the lords' courts, where a party was dissatisfied with the judgment of the peers, which was by accusing them of having given a false or malicious judgment, and offering to make good the charge by the duel or combat. This was called the *appeal of false judgment*. *Esprit des Loix*, liv. 28, c. 27.

APPEAL. [L. Lat. *appellum*; L. Fr. *appel*, from *appeller*, to call upon, or challenge.] In old English criminal law. A proceeding in the nature of a criminal prosecution, being an accusation by a private subject against another for some heinous crime, demanding punishment on account of the particular injury suffered, rather than for the offence against the public. 4 *Bl. Com.* 312. In other words, it was a private process for the punishment of a public crime. *Id. ibid.* Bracton (fol. 146,) calls it a criminal action, (*actio criminalis*;) and Britton defines it to be "a complaint made by a man against another, with the purpose of attaining him of felony by words ordained for that purpose;" (*pleynte de home faite sur autre, ovesque purpos de luy atteindre de felonie, par motz a ceo ordines*.) *Britt. c. 22. Co. Litt. 123 b.*

An appeal was a vindictive action at the suit of the party injured by some heinous offence, in which the appellant, instead of merely seeking pecuniary compensation, as in civil actions, demanded the punishment of the criminal. *P. Cyclopaedia*. Appeals were of various kinds, as appeals of murder, robbery, rape, arson and maihem, and were in general triable by battle. *Bract. lib. 3, tr. 2, cc. 19—30. Britt. c. 22. Co. Litt. 287 b. 4 Bl. Com. 314. 2 Wooddes. Lect. 337.* They were abolished in England by statute 59 Geo. III., c. 46. Lord Holt once said he esteemed an appeal a noble remedy, and a badge of the rights and liberties of an Englishman. *Rex v. Toler*, 1 *Ld. Raym.* 555, 557.

*Appeal* was also the name given to the proceeding in English law where a person, indicted of treason or felony, and arraigned for the same, confessed the fact before plea pleaded, and *appealed*, or accused others his accomplices in the same crime, in order to obtain his pardon. In this case he was called an *approver* or prover, and the party appealed or accused, the *appellee*. 4 *Bl. Com.* 330.

To APPEAL. [L. Lat. *appellare*; L. Fr. *appeller*.] In practice. To call upon a superior court to correct or reverse the judgment or decision of an inferior one; to remove a cause from an inferior to a superior court, for the purpose of re-examination or review.

In old criminal law. To accuse. To appeal a man is as much as to accuse him—from *appeller*, to call, because *appellans vocat reum in judicium*; the appellant calls the defendant to judgment. *Co. Litt.* 287 b.

APPEAR. In practice. To be properly

before a court, as a fact or matter of which it can take notice. (L. Lat. *apparere, constare.*) See *Apparens, Apparere*.

To be regularly in court, as a defendant in an action. (L. Lat. *comparere.*) See *Appearance*.

**APPEARANCE.** [L. Lat. *comparentia, apparentia, apparitio.*] In practice. The act or proceeding in an action, by which the defendant is brought, or places himself before the court in which it is commenced, in order to answer to the action. It is, in other words, the prescribed mode of complying with the exigency of the plaintiff's process; the defendant admitting by his appearance that he has had a general intimation of the suit, and is ready to receive more particular statement of its ground and object. 3 *Steph. Com.* 564. Appearance is the first act of the defendant in court, and, until it is properly effected, no judgment can be awarded against him in any personal action. *Id. ibid.* 1 *Tidd's Pr.* 238.

In actions at law, an appearance is effected either by putting in sufficient bail, where the action requires bail; or, in non-bailable actions, by endorsing on the process served a memorandum authorizing the clerk to enter an appearance; or, in some cases, by filing common bail, or entering a common appearance. 1 *Tidd's Pr.* 238—240. *Archb. N. Pract.* 71. A simple notice of appearance or retainer is also sometimes made equivalent to an appearance. 1 *Burr. N. Y. Pract.* 112. A distinction however is made between an appearance and putting in bail, which is properly the act of the court itself. 1 *Tidd's Pr.* 238. In equity, an appearance is usually effected by the solicitor of the defendant filing with the clerk a memorandum requesting the entry of his appearance in the action. 1 *Daniell's Chanc. Pr.* 590. 1 *Barbour's Chanc. Pr.* 79. See *Bail, Common Bail, Common Appearance*.

**APPEARAND HEIR.** In Scotch law. An apparent heir. See *Apparent heir*.

**APPEAUX, Apeaus.** L. Fr. Appeals. *Kelham.* See *Appel*.

**APPEL.** L. Fr. [L. Lat. *appellum.*] In old English law. An appeal. *Britt. c.* 22. See *Appeal*.

In old French law. A challenge. *Esprit des Lois*, liv. 28, c. 27.

**APPEL, Appèle, Appelle.** L. Fr. [from *appeller*, q. v.] Called. *Britt. c.* 71.

Appealed; accused. *Stat. Westm.* 1, c. 14. *Appelles de la force. Britt. c.* 23.

**APPELLANS.** L. Lat. [from *appellare*, q. v.] An appellant, one who appeals or prosecutes an appeal; an accuser or challenger. *Bract.* fol. 137, 138.

**APPELLANT.** In practice. One who appeals; the party to an action by whom an appeal is made or taken; the opposite party being usually termed the *respondent*, and sometimes the *appellee*. *Cowell. Tomlins.*

**APPELLARE.** Lat. In the civil law. To appeal from the judgment or sentence of a court. See *Appello, Appellatio*.

**APPELLARE.** L. Lat. In old practice. To appeal or accuse. A. appellat B. de morte C., fratris sui; A. appeals B. of the death of C., his brother. *Bract.* fol. 138. *Appellare de facto*; to appeal one of fact, that is, as principal. *Id. ibid.* *Appellare de fortia*; to appeal of force, that is, as an accessory. *Id. ibid.*

**APPELLATE.** In practice. Pertaining to appeals; having cognizance of appeals. See *Appellate court, Appellate jurisdiction*.

**APPELLATE COURT.** A court of appeal; a court having cognizance of appeals, or to which appeals are taken.

**APPELLATE JURISDICTION.** Jurisdiction by way of appeal; cognizance of appeals. *Const. U. S.* Art. 3, sec. 2. 1 *Kent's Com.* 316. The power of one tribunal to review the proceedings of another, either as to the law or fact, or both. *Federalist*, No. 81. An appellate jurisdiction necessarily implies that the subject matter has been already instituted in, and acted upon by some other court, whose judgment or proceedings are to be revised. *Story on the Constitution*, (abr.) § 916.

**APPELLATIO.** Lat. In the civil law. An appeal from an inferior to a superior court or tribunal. *Dig.* 49. 1. *de appellationibus*.

**APPELLATOR.** L. Lat. [from *appellare*, (q. v.); L. Fr. *appellour.*] In old practice. An appealer, or accuser. *Bract.* fol. 141 b. *Stat. Westm.* 2, c. 12.

**APPELLATUS.** L. Lat. [from *appellare*, (q. v.); L. Fr. *appelle.*] In old prac-

**APPELLEE.** L. Fr. In old practice, or against whom an appeal is made; the party accused by an appeal. *Glanv. lib. 7, c. 9. Bract. fol. 138, 139. Stat. Westm. 2, c. 12. Spelman, voc. Appellum.*

**APPELLE.** L. Fr. In old practice. The party accused by the process of appeal. *Britt. c. 23. See Appeal.*

**APPELLEE.** [L. Fr. *appelle*, q. v.] In practice. The party against whom an appeal is made. More commonly termed the *respondent*; the party answering to, or opposing an appeal. See *Respondent*.

**APPELLER, Appeler.** L. Fr. In old practice. To call; to call or summon before a judge; to appeal or accuse. *L. Fr. Dict. John que cy est appelle Peres qui il lonques' est, de ceo, que, &c.*; John, who is here, appeals Peter who is there, of this, that, &c. *Britt. c. 22.*

**APPELLO.** Lat. In the civil law. I appeal. The form of making an appeal *apud acta*. *Dig. 49. 1. 2.*

**APPELLOUR.** L. Fr. In old practice. The party who brought an appeal; the plaintiff in an appeal. *Britt. c. 22.*

**APPELLUM.** L. Lat. [from L. Fr. *appel*, q. v.] In old practice. An appeal. *Magna Charta, c. 34. Spelman. Fiat appellum per verba appellum facientia*; the appeal must be made by words of appeal. *Bract. fol. 140.*

**APPENDANT.** L. Fr. and Eng. [from Fr. *appender*, to hang to, to belong or be annexed to; Lat. *appendens, adjunctum, accessorium*.] In the law of estates. Annexed or appended to, as a right of common to a freehold, or one inheritance to another that is superior or more worthy. *Co. Litt. 121 b. 2 Bl. Com. 33. 3 Kent's Com. 404.* This word is sometimes confounded with *appurtenant* (*pertinens*, q. v.) *2 Steph. Com. 5. Termes de la ley.* The distinction between them is, that a thing *appendant* must always be by prescription, but a thing *appurtenant* may be created at this day. *Co. Litt. 121 b. (But see Id. 122 a.) 1 Crabb's Real Prop. 126, § 116. 3 Kent's Com. 404.*

**APPENDITIA.** L. Lat. [from *appendere*, to hang to.] In old conveyancing. The appendages or appurtenances to an estate, &c. *Kennett's Par. Ant. 110. Cowell.*

**APPENNAGIUM.** L. Lat. [from *appendere*, to belong to.] In French law. An appenage or appendage; the portion of a younger son, (*quasi* *appendagium junioris filii*.) *Spelman. See Apunage.*

**APPENSURA.** L. Lat. [from *appendere*, to weigh out.] In old law. Payment of money at the scale, or by weight. *Cowell.*

**APPENT, Apent.** L. Fr. [from *appender*, to belong to.] It belongs. *Appent al visconte receyver plegges*; it belongs to the sheriff to take pledges. *Britt. c. 45. Quo appent a son office*; which belongs to his office. *Stat. Westm. 1, c. 24.*

**APPERTAINING.** [Lat. *pertinens*.] Belonging to; appurtenant. See *Appurtenant*.

Usually occupied with, or lying to; as land with, or to a messuage. *Plowd. 170, 171.*

**APPERTINANCES.** An old form of *appurtenances*, (q. v.)

**APPLUMBATURA.** L. Lat. A soldering together. *Bract. fol. 9. b.*

**APODIARE.** L. Lat. To lean upon. *Spelman.*

**APPOINT.** [L. Fr. *appointer*; L. Lat. *appunctuare*.] In equity, and conveyancing. To direct, designate, or limit; to make or direct a new disposition of an estate already conveyed, by virtue of a power contained in such conveyance.\* A term particularly applied to conveyances to uses, and signifying to create, raise or direct a use; to limit a new use; to substitute a new use in place of a former one; to declare the use upon an estate already legally created to serve it. *1 Steph. Com. 505, et. seq. 4 Kent's Com. 330. 2 Crabb's Real Prop. 725. § 2027. See Appointment, Use.*

**APPOINTMENT.** In equity, and conveyancing. A deed or instrument executed in pursuance of a power contained in some preceding deed, (called a power of appointment;) and which operates as a conveyance, by limiting a use, or by substituting a new use in place of a former one.\* *1 Steph. Com. 506. 2 Crabb's Real Prop. 725. § § 2027, 2028. 4 Kent's Com. 316. See Power of appointment.*

An appointment may be made by deed or will, or simply by writing, where the mode of executing the power is not defined. *3 Kent's Com. 330. 1 Powell on Devises,*



65—71. It is not considered<sup>d</sup> as an independent conveyance, but merely ancillary to the former deed; and the party in whose favor it is made, called the *appointee*, is considered, for most purposes, as deriving his title under the original conveyance, and to be in the same position as if that instrument had actually contained a limitation in his favor, to the extent of the estate appointed. 1 *Steph. Com.* 506, 507. See *Power*.

**APPOINTOR.** The person who appoints, or executes a power of appointment; as *appointee* is the person to whom, or in whose favor an appointment is made. 1 *Steph. Com.* 506, 507. 4 *Kent's Com.* 316. 2 *Crabb's Real Prop.* 725, § 2028, *et seq.*

**APPONERE.** L. Lat. [from *ad*, to, and *ponere*, to put.] In old practice. To put, or set to. *Justitarii apponant sigilla sua*; the justices shall affix their seals. *Stat. Westm.* 2, c. 31.

To put in, or set up. *Appono clameum meum*; I set up my claim. The form of words anciently used in making a claim on a fine of lands. *Bract. fol.* 436. 1 *Reeves' Hist. E. L.* 477, 478.

To appoint. *Bract. fol.* 316.

To put, simply. *Apponas loco eorum*; you put in their place. *Reg. Jud.* 75. *Cro. Jac.* 162.

To lay out, or expend. *Reg. Jud. Appendix*, 27.

**APPORT.** L. Fr. A tax, tribute, imposition or payment. *Kelham*.

**APPORTIONAMENTUM.** L. Lat. An apportionment. *Blount*.

**APPORTIONARE,** *Apporconare.* L. Lat. To apportion. *Towns. Pl.* 27. *Apportionata*; apportioned, assessed. *Reg. Orig.* 268.

**APPORTIONMENT.** [L. Lat. *apportionamentum*.] In the law of contracts. A dividing, or making into parts. *Co. Litt.* 147 b. A distribution according to a certain proportion.\* The distribution of a claim or charge among persons having different interests or shares, in proportion to their interests or shares in the subject matter to which it attaches. 1 *Story's Equity Jur.* § 475 a, note. A term applied to rents, common, and other incorporeal hereditaments. See *infra*.

**APPORTIONMENT OF RENT.** The dividing of a rent into parts, consequent upon the division of the land out of which it issues,

either by grant, devise, descent or recovery; the apportionment being made according to the number and proportion of the parties among whom the land is divided, and according to the value of the land.\* *Termes de la ley. Cowell. Brande.* Thus, where the owner of the reversion sells part of the demised premises, the rent shall be apportioned; the tenant paying part to the original owner, and the residue to the grantee, according to the proportion of their interests in the premises. 3 *Kent's Com.* 469, 470. 1 *Crabb's Real Prop.* 214, § 210. So, in the case of the division of lands by devise or descent. *Id. ibid.* 3 *Kent's Com.* 469, 471. So, where part of the land is recovered by a person having a title paramount to that of the lessor, the rent must be payable to the lessor, as corresponds with the value of what is still held by the tenant under him. 2 *Steph. Com.* 29. 1 *Crabb's Real Prop.* 215, § 210. Rent may also be directly apportioned, by granting part of it to one person, and part to another. 3 *Kent's Com.* 469. And it may be apportioned in respect to time. *Id.* 470. 1 *Hilliard's Real Prop.* 244. See 1 *Story's Equity Jur.* § 475, *et seq.*

**APPORTIONMENT OF COMMON.** The division of the right of common, consequent upon the division of the land to which it is incident.\* Thus, if a man seised of forty acres of land, to which common of pasture is appurtenant, alienes five acres of it to another, the alienee will be entitled to common *pro tanto*, that is, for all his commonable cattle *levant and couchant* on the five acres. 8 *Co.* 78 b. 4 *Id.* 37. 2 *Steph. Com.* 30. 3 *Kent's Com.* 405. 1 *Crabb's Real Prop.* 300, §§ 333, 334.

**APPORTUM.** L. Lat. [from Fr. *apport*, or Lat. *apportare*, to carry or bring.] In old records. The revenue, gain or profit which a thing brings to its owner; any profit or emolument *apported*, or brought to another. Used frequently to signify a corody or pension. *Cowell. Blount*.

Any thing carried out of a country. *Reg. Orig.* 193 b.

**APPOSAL OF SHERIFFS.** [from Fr. *apposer*, q. v.] In old practice. The charging of sheriffs with money received upon their account in the exchequer. *Stat.* 22 & 23 *Car. II.* *Cowell*.

**APPOSER.** L. Fr. To question; to adjust or settle. *Kelham*.

**APPOSER.** In old practice. An officer in the English exchequer, whose business it was to examine the sheriff's estreats with the record, and to ask the sheriff what he could say to every particular sum therein: usually termed the *foreign apposer*. *Termes de la ley*.

**APPOSTILLE.** In French law. An addition or annotation made in the margin of any writing. *Merlin. Bouvier*.

**APPRECIARE, Appretiare.** L. Lat. To appraise, or estimate. *Reg. Orig.* 152. *Bract.* fol. 73, 74.

**APPRECIATIO, Apprecio.** L. Lat. An appraisement. *Bract.* fol. 72, 73. *Reg. Orig.* 150.

**APPREHENSION.** [Lat. *apprehensio*, from *apprehendere*, to take hold of.] In the civil law. A physical or corporal act, (*corpus*), on the part of one who intends to acquire possession of a thing, by which he brings himself into such a relation to the thing, that he may subject it to his exclusive control; or by which he obtains the physical ability to exercise his power over the thing whenever he pleases. One of the requisites to the acquisition of judicial possession, and by which, when accompanied by intention, (*animus*), possession is acquired. 1 *Kaufm. Mackeld. Civ. Law*, 247, 248, §§ 239, 240.

**APPRENTICE.** [L. Lat. *apprenticius*: Fr. *apprenti*, from *apprendre*, Lat. *apprehendere*, to take, to learn.] One who learns; a learner. A species of servant, usually an infant, bound by indenture to serve another for a term of years, receiving in return for his services, instruction in his master's trade, art or occupation.\* 1 *Bl. Com.* 426. 2 *Kent's Com.* 261. *United States Digest*, Apprentice. The word *apprentice* is said to have been first used in this sense in a charter of 12 Edward III. *Cowell*. But see *id. ibid.* 3 *Reeves' Hist. E. L.* 223, 170.

By a provision of the statute 5 Eliz. c. 4, which remained in force until a recent period, it was, in general, required that every person exercising a trade in England should have previously served as apprentice to it for seven years; but by statute 54 Geo. III., c. 96, that provision was abolished, with a saving of the customs and by-laws of London, and other corporations; and by the municipal act, 5 & 6 Will. IV., c. 76, s. 14, all such restrictions established by custom or by law, in any of the boroughs to which

that statute extends, are also done away. 2 *Steph. Com.* 271, 272.

**APPRENTICE OE (or IN) LAW.** [L. Fr. *apprentise en la ley*; L. Lat. *apprenticius legis*, or *ad legem*.] A title formerly given in England to counsellors at law of a certain degree, corresponding with the modern *barrister*. See *Apprenticius ad legem*.

**APPRENTICIUS, Apprentitius.** L. Lat. [from Fr. *apprendre*, to learn.] An apprentice. *Kennett's Par. Ant.* 449. *Cowell*. See *Apprentice*.

**APPRENTICIUS AD LEGEM.** L. Lat. [L. Fr. *apprentise en la ley*.] In old English practice. An apprentice or student at law; a learner in the law; sometimes called *apprenticius legis*, (an apprentice or learner of the law), and *apprenticius ad barras*, (an apprentice at the bars or bar of the court); from which has been derived the modern term *barrister*. A title formerly given in England to counsellors below the degree of serjeant. *Spelman*, voc. *Apprenticii*. 3 *Bl. Com.* 27. *Fortescue de L. L. c.* 50. *Selden's notes*, *ibid.* 3. *Plowd.* 102 a, et *passim*. Thus, *Plowden* says of a cause reported by him: "It was argued this term by many apprentices, and by all the serjeants at the bar." *Id.* 102 a. Barristers are styled in the old books *apprenticii ad legem*, (apprentices at law,) from their being considered as merely learners, and not qualified to execute the full office of an advocate till they were of sixteen years' standing, at which time they might be called to the degree of serjeant. 3 *Bl. Com.* 27.

The term *apprentice* appears to have been first used in the law; at least, the word does not occur in application to mechanic arts before the reign of Henry IV., while apprentices in law are mentioned in an ordinance in the twentieth year of Edward I. 2 *Reeves' Hist. Eng. Law*, 284, 285.; *Crabb's Hist. E. L.* 191, 432 (Am. ed.) *Spelman*, voc. *Apprenticii*. The name of *apprentice in law* was given indiscriminately to all students, but those of the inns of court were distinguished by the epithet *nobiliores*, or *apprenticii ad barras*, because they were admitted to plead at the bars of all the courts, except the court of common pleas. *Crabb's Hist. E. L.* 431. *Spelman. Fortescue*, *ubi sup.* *Plowden* and *Finch* both style themselves in their works *apprentices of law*. After the word came to be applied to learners of the mechanic arts, it fell into disuse in law, and the term *barrister* took its place. *Crabb's Hist. ub. sup.* It is used,

however, in the reports, as late as the eleventh year of Charles I. *Wilkinson v. Merryland*, *Cro. Car.* 449. Mr. Barrington is inclined to think that *apprentice* was a corruption of *appris*, or *appris en ley*, (learned in the law, an epithet by which a counsellor is still described in records.) *Barringt.* 311. Probably both terms were employed as designating the degrees of knowledge which the student successively attained, from *apprenti*, (a learner,) becoming *appris*, (learned); but *apprentice* was certainly the established professional title. Formerly the suitor, who was the *client* of the *serjeant*, was called the *master* of the *apprentice* of the court whom he employed, whether that apprentice was acting as his attorney, or as his counsel in courts in which serjeants did not usually attend. 6 *Man. & Gr.* 835, note, citing *Serviens ad legem*, 11, 45, 188. 3 *Reeves' Hist. E. L.* 233. See *Attorney, Dominus, Master*.

**APPRENTISSAGE.** L. Fr. Apprenticeship or novitiate, (*tirocinium*.) *Spelman. Cowell.* The state of an apprentice, or the term for which he was bound.\* *Apprentissage* is used by old English writers. *Richardson's Dict.*

**APPRESTER.** L. Fr. To prepare. *Apprest*; prepared, ready. L. Fr. *Dict.*

**APPRIMES.** L. Fr. First. *Kelham.*

**APPRIS, Apprise.** (pl. *Apprises*.) L. Fr. [from *apprendre*, to learn.] Learned or skilled. *Apprises en la ley*; learned in the law. *Litt. epilogus. Les lays gents que ne sont apprises en la ley*; the common people who are not learned in the law. *Litt. sect.* 331.

**APPROBARE.** L. Lat. To approve. *Towns. Pl.* 52. See *Approve*.

**APPROBATE AND REPROBATE.** In Scotch law. To approve and reject. Equity suffers no person to *approve* and *reprobate* the same deed. 1 *Kames' Equity*, 317.

**APPROBATOR.** L. Lat. [from *approbare*, q. v.] An approver. *Towns. Pl.* 52. See *Approver, Probator*.

**APPROPRIARE.** L. Lat. [from *ad*, to, and *proprius*, one's own.] To take to one's own separate use; to appropriate; to approve. *Appropriare et includere [communiam]*; to approve, or separate and enclose

a common; to discommon it. *Bract. fol.* 228. *Kennett's Par. Ant.* 336.

**APPROPRIATION.** In English ecclesiastical law. The perpetual annexing of a benefice to some spiritual corporation either sole or aggregate, being the patron of the living. 1 *Bl. Com.* 384. 3 *Steph. Com.* 70—75. 1 *Crabb's Real Prop.* 144, § 129. *Termes de la ley. Cowell.* Where the annexation is to the use of a lay person, it is usually called an *impropriation*. 1 *Crabb's Real Prop.* 145, § 130.

**APPROVE.** [L. Lat. *appropriare, appruare*; L. Fr. *approver, approuer, appruer*.] In old English law. To take to one's own separate use, (*ad proprium*); as by enclosing land that was before common or waste. To enclose for the purpose of cultivation.\* See *infra*.

To cultivate land after enclosing it.\* To make the best benefit or profit of it, by increasing the rent. *Cowell.* In modern phrase, to *improve* land.

To *approve* common or waste land, is to enclose and convert it to the purposes of husbandry, which the owner might always do, provided he left common sufficient for such as were entitled to it. *Stat. Merton*, c. 4. *Stat. Westm.* 2, c. 46. 2 *Bl. Com.* 34. 3 *Id.* 240. 2 *Steph. Com.* 7. 3 *Kent's Com.* 406. See *Appropriare, Approvement*.

**APPROVE.** [L. Lat. *approbare*.] In old criminal law. To accuse or prove; to accuse an accomplice by giving evidence against him. See *Approvement*.

**APPROVEMENT.** [L. Lat. *approvementum, appruamentum*.] Enclosure; the enclosing part of a common or waste ground, leaving sufficient common with egress and regress for the commoners. 2 *Bl. Com.* 34. 3 *Id.* 240. 1 *Crabb's Real Prop.* 291, § 319. *Id.* 306, § 342. *Cowell.*

Enclosure for the purpose of cultivation; cultivation or improvement. *Id.*

**APPROVEMENT.** In English criminal law. A species of confession, which was when a person indicted of treason or felony, and arraigned for the same, confessed the fact before plea pleaded, and *appealed* or accused others his accomplices in the same crime, in order to obtain his pardon. In such case he was called an *approver*, or *prover*, (*probator*), and the party appealed or accused, the *appellee*. 4 *Bl. Com.* 330. It was a species of appeal, and triable in some cases by *battel*. *Id. ibid.*

With the discontinuance of appeals in

England, this practice has become obsolete; the present practice being to permit the criminal who confesses his guilt to give evidence against his associates, thus making him what is called *queen's evidence*, and in the United States, *state's evidence*.\* *Id.* 331. 4 *Steph. Com.* 398, 399. See *Approver*.

**APPROVEAMENTUM.** L. Lat. An approvement, or improvement. *Cowell, voc. Approvement.*

**APPROVER.** [L. Lat. *approbator, probator.*] In English criminal law. A person, who being indicted of treason or felony, upon his arraignment, before plea pleaded, and with a view of obtaining a pardon, confessed the crime charged in the indictment, and was thereupon admitted by the court to reveal on oath the accomplices of his guilt.\* 4 *Bl. Com.* 330. The accusation made in such cases, together with the particulars of the disclosure, was called an *appeal*, and the parties accused, the *appellees*. *Id. ibid.* *Bract.* fol. 152. See *Approvement, Appeal, Probator.*

**APPROVER.** In old English law. The bailiff of a lord in his franchise. *Stat. 9 Hen. VI., c. 10. Cowell.* The king's approvers were those that had the letting of the king's demesnes in small manors, to his best advantage. *Stat. 51 Hen. III., st. 5.* Sheriffs were sometimes called the king's approvers. *Stat. 1 Edw. III., c. 8. Cowell. Blount.* The word was sometimes written *emprover*. *Blount.*

**APPRUAMENTUM.** L. Lat. [from *appruare*, q. v.] An approvement, or improvement. *Cowell. Salvis eidem R. appruamentis suis*; saving to the said R. his approvements. *Reg. Jud.* 8.

**APPRUARE.** L. Lat. [L. Fr. *appruer*.] To approve, or improve. *Stat. Westm. 2, c. 46. Appruari*; to be approved. *Cowell, voc. Approve.*

**APPURTENANCES.** [anciently written *appertinances*; from L. Fr. *apurtinaunces*, (q. v.) L. Lat. *appertinentia, pertinentia.*] Things belonging, appertaining or appurtenant to another thing as principal, (as a right of way, or other easement, to land; a right of common to a pasture; outhouses, barns and orchards to a house or messuage); and which pass as incident to the principal thing; in Scotch law, *pertinents*. The singular *appurtenance* is sometimes used. "An appurtenance is something annexed to ano-

ther thing more worthy." *Story, J., 1 Sumner's R.* 492, 495.

Where a conveyance is made of a house "with the *appurtenances*," the garden, outhouse and close adjoining to the house, and on which the house is built, will pass with it, as being included in the word *appurtenances*; but no other land will pass, although usually occupied with the house.\* 2 *Saund.* 401, note (2). 1 *Steph. Com.* 449. 2 *Chitty's Bl. Com.* 17, note (3). *Hargr. Co. Litt.* note 21, lib. 1. So, in the lease of a house, nothing will pass under the name of *appurtenances*, which has not been reputed or accepted as a parcel thereof. 2 *Crabb's Real Prop.* 246, 247, § 1299. In a devise, the word *appurtenances* is construed to mean whatever is necessary to the commodious enjoyment of a thing; and by a devise of a messuage, without the words "with the *appurtenances*," the garden and curtilage will pass, and, where the intent is apparent, even other adjacent property. 2 *Powell on Devises*, 190. 2 *Saund.* 401, note (2). 1 *B. & C.* 350. 2 *Chitty's Bl. Com.* 17, note (3). *Id.* 19, note (7). See *Appurtenant*.

A ship's boat is not considered as an appurtenance of the ship, and will not pass with the ship under the word *appurtenances*. *Dig.* 21. 2. 44. *Roccus de Navibus et Naulo*, not. 20. *Abbott on Shipping*, 5. 17 *Mass.* 405.

**APPURTENANT.** [L. Lat. *pertinens*.] Belonging to; accessory or incident to. This word answers to the *accessorium* of the civil law. 2 *Steph. Com.* 30, note. Land is not properly appurtenant to a house, but it may pass by such words in a deed by reputation, in common parlance, and by the intent of the parties. 2 *Crabb's Real Prop.* 247, § 1299. *Cro. El.* 918. 3 *Salk.* 40. 2 *Saund.* 401 a. 2 *Chitty's Bl. Com.* 19, note (7). Nor can land, strictly speaking, be appurtenant to land. But a thing, to be appurtenant to another, must be of a different and congruous nature, such as an easement or servitude, or some collateral incident belonging to, and for the benefit of the land. *Story, J., 1 Sumner's R.*, 21, 37. *Plowd.* 170. *Co. Litt.* 121 b. Thompson, J., 10 *Peters' R.* 25, 54. 1 *Hilliard's Real Prop.* 340.

**APRES, Apree.** L. Fr. After, afterwards. *L. Fr. Dict. En apres*; hereafter, moreover. *Id. Cy apres*; thereafter. *Id.*

**APUD.** Lat. At. *Apud turrim*; at the tower. *Bract.* fol. 360 b. *Apud London, videlicet, in parochia beate Mariae de*

*arcubus, in warda de cheap*; at London, to wit, in the parish of St. Mary-le-bow, in the ward of Cheap. *Towns. Pl.* 166. 2 *Ld. Raym.* 1043. The old form of laying a veyre in London.

Among. *Apud acta*; among the acts, transactions or recorded proceedings. See *Acta*. This term is applied in the civil law to appeals made *viva voce*, in the presence of the judge, at the time of the sentence. The party in such case might appeal by simply saying, *Appello*; (*Iappeal*.) *Dig.* 49. 1. 2. 2 *Brown's Civ. Law*, 436.

APURTENAUNCES. L. Fr. Appurtenances. Used by Britton as another name for incorporeal things, (*choses nent corporeles*.) or rights in land. *Britt. c.* 54.

AQUA. Lat. [*L. Fr. ewe, awe, aeue.*] Water. *Aqua dulcis*, or *frisca*; fresh water. *Reg. Orig.* 97. *Bract.* fol. 117, 135. *Aqua salsa*; salt water. *Id. ibid.* *Aqua trestornata*, (*ewe tresturne*); a stream turned out of its course. *Id.* fol. 115.

*Aqua cedit solo.* Water belongs to, or goes with the land [which it covers.] *Co. Litt.* 4 a, b. 2 *Bl. Com.* 18.

*Aqua currit et debet currere, ut currere solebat.* Water runs, and ought to run as it has used to run. 3 *Bulstr.* 339. Story, J., 3 *Sumner's R.* 189, 199. 3 *Kent's Com.* 439. A running stream should be left to flow in its natural channel, without alteration or diversion.

AQUÆ. Lat. Waters. *Reg. Orig.* 97. Streams. *Stat. Westm.* 2, c. 47. *Aquarum cursus*; water-courses. *Towns. Pl.* 20.

AQUÆDUCTUS. Lat. [from *aqua*, water, and *ductus*, a leading; a duct or pipe.] In the civil law. The right of leading water through another's land, (*ius aquæ ducendæ per fundum alienum*.) *Inst.* 2. 3. pr. Or, as Bracton more fully defines it, the right of leading water from another's land, and through another's land, to one's own, for the purpose of irrigation, or other convenience; (*ius aquæ ducendæ ex fundo alieno et per fundum alienum usque ad fundum proprium, ad irrigandum agrum suum, vel ad aliud commodum faciendum*.) *Bract.* fol. 231 b. A species of rural servitude, the opposite of the *servitus aquæ educendæ*, which was the right of leading off the water from one's own on to another's ground. *Dig.* 8. 3. 29.

AQUÆ HAUSTUS. Lat. [from *aqua*, water, and *haustus*, a drawing.] In the

civil law. The right of drawing water from another's spring or well. *Inst.* 2. 3. 2. *Bract.* fol. 231 b. 232.

AQUAGIUM. Lat. [quasi *aquæ agium*, i. e. *aquæ ductus*.] In old records. A duct or passage for water; a canal, ditch or trench for leading off water, especially from marshy grounds. *Spelman. Cowell.*

*Aquagangium.* The passage or flow of water, (*Sax. watergang*); a trench or drain to carry off water. The same nearly as *aquagium*. *Cowell, voc. Watergang.*

*Aquagaugium.* A water gage. A mark placed on the banks of streams to show when the water rose to a certain point. *Spelman.*

AQUATIC RIGHTS. Rights to the use of the sea and rivers, for the purpose of fishing and navigation, and also to the soil in the sea and rivers. *Schultes' Aquatic Rights*, per tot. 3 *Kent's Com.* 419, 427. See *Fishery, Alluvion, Avulsion, Dereliction, Filum aquæ, Riparian rights.*

ARA ETE. L. Fr. Shall have been. *Kelham.*

ARABANT. Lat. They ploughed. *Arabant et herciabant ad curiam domini*; they ploughed and harrowed at the lord's court. A phrase of frequent occurrence in Domesday Book, signifying that the vassals to whom it was applied, were bound to plough and harrow the lands of the lord within his court, that is, within his manor. *Spelman. See Court.*

ARACE. L. Fr. To erase; to deface. *L. Fr. Dict. Kelham.*

ARACHER. L. Fr. To root up; to grub or pull up by the roots. *Id.*

ARACINE. L. Fr. Rooted; taken root. *Arbres aracines.* *Britt. c.* 33.

ARALIA. L. Lat. [from *arare*, to plough.] Arable grounds; lands devoted to tillage, (*agri cultura dati, arva*.) *Spelman. Domesday Book.* In some dictionaries, this word is incorrectly written *arnalia*, and *aratia*.

ARARE. Lat. [*L. Fr. arer, erer.*] To plough; in old English, to *ear* or *are*.

ARATOR. Lat. [from *arare*, q. v.] A ploughman; an arable farmer. *Brande.*

ARATRIFABER. L. Lat. [from *ara-*

*trum*, a plough, and *faber*, a smith.] A plough-wright. *Towns. Pl.* 237.

ARATRUM TERRÆ. L. Lat. A plough of land; a plough land; as much land as could be tilled with one plough. *Whishaw. See Carucate.*

ARATURA TERRÆ. L. Lat. The ploughing of land; the service which the tenant was to do for his lord in ploughing his land. *Whishaw.*

ARATURIA. L. Lat. [from *arare*, q. v.] Land used for ploughing; arable land, (*campus arabilis*.) *Spelman.*

ARAYER, *Araer*, *Arair*. L. Fr. To array, prepare, settle. *Kelham. See Arrayer.*

ARBITER. Lat. In the Roman law. A judge invested with a discretionary power. A person appointed by the prætor to examine and decide that class of causes or actions termed *bonæ fidei*, and who had the power of judging according to the principles of equity, (*ex æquo et bono*); distinguished from the *judez*, (q. v.) who was bound to decide according to strict law. *Inst.* 4. 6. 1. *Cooper's Notes, in loc. Cowell.*

A person to whom contending parties submitted the decision of their dispute, without the interference of a magistrate; answering to the modern term *arbitrator*. These *arbitri* were appointed by an agreement called *compromissum*, and were hence termed *arbitri compromissarii*. *Dig.* 4. 8. *Cooper's Inst. ub. sup.*

ARBITRAMENT, *Arbitrement*. [L. Lat. *arbitramentum*, *arbitrium*.] The award, determination or decision of arbitrators upon the matter of dispute which has been submitted to them.\* *Cowell. Termes de la ley. See Award.*

ARBITRATION. [Lat. *arbitratio*, *arbitratus*.] The investigation, before an unofficial person, of the matters in difference between contending parties, pursuant to an agreement, (usually in writing,) termed, a *submission*.\* *Brande.* The adjudication upon a matter in controversy, by private individuals, selected and appointed by the parties. *P. Cyclopaedia.* 3 *Bl. Com.* 16. 3 *Steph. Com.* 374. *Billings on Awards*, 3.

ARBITRATOR. Lat. and Eng. [Lat. *arbitrator compromissarius*.] A disinterested person, to whose judgment or decision matters in dispute are submitted by consent of parties. 3 *Bl. Com.* 16. *Reg. Orig.* 111.

An arbitrator is a judge of all matters of law and fact included in the case submitted to him; and being a judge chosen by the parties themselves, his decision generally is absolutely final. *Billings on Awards*, 55—65. *Russell's Arbitrator*, 112. It is the usual practice for each party to appoint an arbitrator, with a stipulation that if the arbitrators do not agree, another person shall be called in as *umpire*, to whose sole judgment it is then referred. 3 *Bl. Com.* 16. *See Umpire.*

ARBITRATUS. L. Lat. Awarded. *Idem arbitratores arbitrati fuissent et adjudicassent*; the said arbitrators awarded and adjudged. *Reg. Orig.* 111.

ARBITRIUM. L. Lat. [from *arbitrari*, q. v.] An award; the decision of an arbitrator. *Reg. Orig.* 111. *Arbitrium est judicium*. An award is a judgment. *Jenk. Cent.* 137. *Arbitrium est judicium boni viri, secundum æquum et bonum*. An award is the judgment of a good man, according to equity and virtue. 3 *Bulstr.* 64.

Discretion or judgment used in making a decision. *Lex non exacte definit, sed arbitrio boni viri permittit*; the law does not exactly define, but leaves to the discretion of a conscientious man or judge. *Grotius de Æquit.* s. 3. 1 *Bl. Com.* 61.

ARBOR. Lat. A tree; a tree growing, as distinguished from *lignum*, dead wood, or wood cut.

*Arbor dum crescit, lignum cum crescere nescit.*

[That which is] a tree while it grows, [is] wood when it ceases to grow. *Cro. Jac.* 166. *Hob.* 77 b, *in marg.*

*Arbor finalis*; a tree used for marking a boundary line. *Bract.* fol. 167, 207 b.

ARCARIUS. L. Lat. [from *arca*, a chest.] A treasurer. *Spelman.*

ARCA CHIROGRAPHICA (or CHIROGRAPHORUM) JUDÆORUM. L. Lat. The charter chest of the Jews. A common chest, with three locks and keys, kept anciently in England by certain Christians and Jews specially designated for that purpose, in which all the contracts, mortgages and obligations belonging to the Jews were kept; and this by order of King Richard I. *Blount. Molloy de Jur. Marit.* 465, 466.

ARCANA IMPERII. Lat. Mysteries of government; secrets of state. 1 *Bl. Com.* 337.

**ARCEWESCHE.** L. Fr. An archbishop. *Kelham.* A corruption of *archiesque*.

**ARCHAIONOMIA,** (Gr. ἀρχαιονομία,) *sive de priscis Anglorum legibus.* The title of a collection of Saxon laws, made by Mr. Lambard in the time of Queen Elizabeth, and to which additions were made by Dr. Wilkins. 1 *Reeves' Hist. Eng. Law*, 27. Some of these Saxon laws are now considered as spurious. 2 *Hallam's Middle Ages*, 444. 1 *Spence's Chancery*, 18, 19, and note. See *Leges Edwardi Confessoris*.

**ARCHBISHOP.** [Lat. *archiepiscopus*, Fr. *archievêque*.] In English ecclesiastical law. The chief of the clergy in his province, having supreme power under the king or queen in all ecclesiastical causes.\* 1 *Bl. Com.* 380. 3 *Steph. Com.* 62. *Wharton's Lex.* The archbishops in England are also termed *primates* and *metropolitans*, (qq. v.) 1 *Wooddes. Lect.* 181.

**ARCHDEACON.** [L. Lat. *archidiaconus*, *archilevita*.] In English ecclesiastical law. An ecclesiastical officer having jurisdiction immediately subordinate to the bishop, through the whole of his diocese, or in some particular part of it. He is usually appointed by the bishop himself, and has a kind of episcopal authority, originally derived from the bishop, but now independent and distinct from his. 1 *Burn's Eccl. Law*, 68, 69. 1 *Bl. Com.* 383. 3 *Steph. Com.* 69. 4 *Reeves' Hist. Eng. Law*, 5. *Cowell.*

**ARCHDEACON'S COURT.** In English ecclesiastical law. A court held before a judge appointed by the archdeacon, and called his official. 3 *Steph. Com.* 430. Its jurisdiction comprises the granting of probates and administrations, and ecclesiastical causes in general, arising within the archdeaconry. *Id. ibid.* It is the most inferior court in the whole ecclesiastical polity of England. 3 *Bl. Com.* 64.

**ARCHES COURT, or COURT OF ARCHES.** [L. Lat. *curia de arcubus*.] In English ecclesiastical law. A court of appeal, and also of original jurisdiction, belonging to the archbishop of Canterbury; so called from its having been anciently held in the church of St. Mary-le-bow, (*Beata Maria de arcubus*), or *Bow church*, (literally the church of *arches*, so termed from the fashion of its steeple.)\* *Reg. Orig.* 54 b. 3 *Bl. Com.* 65. 3 *Steph. Com.* 431. 4 *Reeves' Hist. Eng. Law*, 104. *Cowell.* The judge of this court is called the *dean of the*

*arches*, and his office is to receive and determine appeals from the sentences of all inferior ecclesiastical courts within the province. 3 *Bl. Com.* 65. Many suits also are brought before him as original judge, the cognizance of which properly belongs to inferior jurisdictions within the province, but in respect of which the inferior judge has waived his jurisdiction under a certain form of proceeding known in the canon law by the denomination of *letters of request*. 3 *Steph. Com.* 431. 2 *Chitt. Gen. Pr.* 496. From the court of arches an appeal formerly lay to the Court of Delegates, but it now lies, by statute 2 & 3 Will. IV., c. 92, to the privy council. 3 *Steph. Com. ub. sup.* This court is now held at Doctors' Commons. 2 *Chitt. Gen. Pr.* 499.

**ARCHIEPISCOPUS.** Lat. An archbishop. *Archiepiscopus Cantuar.*; archbishop of Canterbury. *Archiepiscopus Ebor.*; archbishop of York. *Towns. Pl.* 148.

**ARCHIVES.** [L. Lat. *archiva*, from *arca*, a chest, or Gr. ἀρχεῖον, ancient, or ἀρχεῖα, public registers.] A place or apartment where the public papers or records of a state or community are deposited; a repository of ancient records, charters and evidences, such as the Rolls' office and the Chancery and Exchequer offices in England. *P. Cyclopaedia. Cowell.*

The records or writings so deposited. *Id.*  
A private repository of papers. *Id.*

**ARCT.** L. Fr. [from *arcter*, q. v.] Bound, compelled, forced. *L. Fr. Dict.*

**ARCTA ET SALVA CUSTODIA.** L. Lat. Close and safe custody. See *In arcta*, &c.

**ARCTABLE.** L. Fr. Forcible. *L. Fr. Dict.*

**ARCTER.** L. Fr. To bind; to compel or force. *Id.*

**ARCUATUS.** L. Lat. [from *arcus*, an arch.] Fashioned like an arch; arched. *Towns. Pl.* 188.

**ARDER.** L. Fr. [from Lat. *ardere*.] To burn. *Mirr.* c. 1, § 8. See *Ardour*.

**ARDOUR.** L. Fr. [from *arder*, q. v.] A burner; an incendiary. *Ardours de maisons*; burners of houses. *Britt.* c. 29. *Ardours sont qui ardent cite, ville, maison, beast, ou autres chateaux*; burners are those

who burn a city, town, house, animal or other chattels. *Mirr.* c. 1, § 8.

AREA. Lat. A floor. *Towns. Pl.* 187.

A piece or plot of ground. *Spelman.*

In the civil law. A vacant space in a city; a place not built upon. *Locus sine edificio in urbe area appellatur.* *Dig.* 50. 16. 211.

AREMENAUNT, *Arenaunt.* L. Fr. Forever after. *Britt.* c. 24. *Kelham.*

ARENES, *Aresnes, Aresenez.* L. Fr. Arraigned; brought to the bar of the court; put to answer; called in question. *Britt.* c. 4. *Kelham.*

ARENT. L. Fr. A certain sum assessed by way of fine for beaupleader. *Kelham.*

ARENTARE. L. Lat. To rent out, or let at a certain rent. *Cowell.* See *Arrentare.*

ARENTATIO, *Arrentatio.* L. Lat. A renting or rent. *Reg. Orig.* 257 b. See *Arrentatio.*

ARER, *Arer.* L. Fr. [from Lat. *arare.*] To plough. *Arer et semer*; to plough and sow. *Litt.* sect. 119. *Arer et seymer.* *Kelham.* *Arer les prees*; to plough the meadows. *Britt.* c. 5.

ARERE. L. Fr. [L. Lat. *a retro.*] Behind, in arrear. *Riens en arriere*, (q. v.); nothing in arrear.

Back, again. [L. Lat. *re-, iterum.*] *Les bestes viendrent a luy arere*; the beasts shall come back to him. *Reg. Orig.* 97 b.

ARESTER, *Areiter.* L. Fr. To stop or stay; to arrest. *L. Fr. Dict.*

ARET. L. Fr. An account. *Id. Arete*; taken or charged with some crime. *Id.* See *Arret.*

ARETRO. L. Lat. Behind, in arrear. *Quod ei aretro fuit*; which was in arrear to him. 2 *Inst.* 533. *In aretro*; in arrear. 2 *Salk.* 583.

ARG. An abbreviation of *arguendo*, (q. v.) much used in the reports.

ARGENTARIA. L. Lat. [from *argentum*, silver, or money.] A banker's trade. *Towns. Pl.* 260.

ARGENTARIUS. Lat. [from *argentum*, silver, or money.] A banker; a silver-smith. *Towns. Pl.* 259, 260. *Argentarius miles*; a kind of money porter or guard in the English Exchequer. *Spelman, voc. Argentus.*

ARGENTEUS. L. Lat. An old French coin. *Spelman.*

ARGENTIFODINA. Lat. A silver mine. *Bract.* fol. 222 b.

ARGENTUM. Lat. Silver. See *infra*. Silver plate. 1 *Ld. Raym.* 20. Silver bullion, or uncoined silver; money paid by weight. *Domesday. Spelman.* Money generally; money paid by tale, or counted; (*pecunia numerata.*) *Id.* Goods generally. *Id.*

ARGENTUM ALBUM. L. Lat. Plain or blank silver, not marked or stamped, (*non signatum*;) uncoined silver; bullion; silver coin worn smooth by use; common silver coin, as distinguished from the metal of full weight and purity. See *Album, Blancus.* By Domesday tenure, some rents to the king were paid in *argento albo*, (common silver pieces of money,) other rents in *libris arsis et pensatis*, (money burnt, or melted and weighed.) *Kennett's Par. Ant. Cowell.*

White rent, or blanch farm. See *Alba firma.*

ARGENTUM DEI. Lat. God's money. Earnest money; money given by way of earnest upon the making of a bargain; sometimes called God's penny, (*denarius Dei.*) *Cowell.* See *Denarius Dei.*

ARGUENDO, (abbrev. ARG.) Lat. In arguing; in the course of argument. A term often used in the books.

ARGUMENTATIVE. In pleading. Indirect. *Steph. Pl.* 179. Pleadings must not be argumentative. *Id.* ch. 2, sect. 5, rule 3. In other words, they must advance their positions of fact in an absolute form, and not leave them to be collected by inference and argument only. *Id. ibid.*

ARGUMENTUM. Lat. Argument or reasoning; inference or deduction.

*Argumentum ab auctoritate est fortissimum in lege.* An argument from authority is the strongest in the law. *Co. Litt.* 254 a. "The book cases are the best proof of what the law is." *Id. ibid.*



**Argumentum ab impossibili valet in lege.** An argument drawn from an impossibility is forcible in law. *Co. Litt.* 92 a.

**Argumentum ab inconvenienti plurimum valet (est validum) in lege.** An argument drawn from inconvenience is of the greatest weight [is forcible] in law. *Co. Litt.* 66 a, 97 a, 152 b, 258 b. *Broom's Max.* 84.

**Argumentum a divisione est fortissimum in jure.** An argument from division is of the greatest force in law. *Co. Litt.* 213 b. 6 Co. 60. *Wingate's Max.* 260, max. 71. Thus, to show that a certain annual payment of money is not properly a rent, Littleton argues from a *division* of the subject, thus: "For if it should be a rent, it must be rent service, rent charge, or a rent secke, and it is not any of these." *Litt.* sect. 345. Lord Coke applies the same kind of argument to commons. 6 Co. 60.

**Argumentum a simili valet in lege.** An argument from a like case, (from analogy) is good in law. *Co. Litt.* 191.

**ARIBANNUM.** See *Herebannum*.

**ARIERBAN.** See *Arrierban*.

**ARIMANNI.** L. Lat. [from Sax. *here*, lord, and *man*, vassal.] In mediæval law. A class of freemen employed in agriculture, otherwise called *conditionales*, *originarii*, *tributales*, &c. They seem to have been persons who possessed some small allodial property of their own, and, besides that, cultivated some farm belonging to their more wealthy neighbors, for which they paid a fixed rent, and bound themselves likewise to perform several small services, such as ploughing a certain quantity of their landlord's ground, assisting him in harvest and vintage work, &c. 1 *Robertson's Charles V.*, Appendix, note ix. *LL. Longob.* lib. 3, tit. 12, l. 5. *Id.* tit. 13, l. 3. *Spelman*, voc. *Arimannus*.

**ARIPENNA, Aripennum.** See *Arpen-nis*.

**ARLES.** In Scotch law. Earnest; money, or other thing given by a buyer to a seller, as a symbol of the bargain. 1 *Forbes' Inst.* part 2, b. 3, c. 1, tit. 7, sec. 1.

**ARM OF THE SEA.** [L. Lat. *brachium maris*; L. Fr. *brace de la mer*.] A portion of the sea where the tide flows and re-flows.\* 5 Co. 107. 7 *Peters' R.* 331, arg. 1 *Kent's Com.* 26—30. An arm of the sea is considered as extending as far into the interior of a country as the water of fresh rivers is propelled backward by the ingress and pres-

sure of the tide. *Angell on Tide Waters*, 73, ch. 3.

**ARMA.** Lat. Arms; weapons offensive and defensive;\* anything that a man strikes or hurts with. *Co. Litt.* 161 b, 162 a. In the civil law, this word included not only shields, swords and helmets, but also clubs and stones; (armorum *appellatione non solum scuta et gladios et galeas, sed et fustes et lapides significari intelligimus*.) *Inst.* 4. 15. 6. *Dig.* 50. 16. 41. This definition, however, is not adopted by Bracton. *Ligna et lapides sub armorum appellatione non continentur.* *Bract.* fol. 144 b. The same author makes several divisions of arms; as arms of peace and of justice, (*arma pacis et justitiæ*), and arms of breach of the peace and of wrong, (*arma perturbationis pacis et injuriæ*.) *Id.* fol. 162 b. He also uses the barbarous singular *armum*, (q. v.)

**ARMA MOLUTA.** L. Lat. Sharp weapons, as swords and battle-axes, that cut or inflict a wound; distinguished from sticks and stones, which only break or bruise. *Bract.* fol. 144 b.

**ARMA.** L. Lat. Armour; arms or cognizances of families; (*insignia gentilitia*.) *Spelman.* *Arma dare*; to dub, or make a knight. *Kennet's Par. Ant.* 101, 289. *Cowell.* *Arma capere, or suscipere*; to take upon one the order of knighthood; to be made a knight. 2 *Reeves' Hist. E. L.* 288.

**ARMAMENTA NAVIS.** L. Lat. The tacklings of a ship. *Towns. Pl.* 227.

**ARMATA VIS.** Lat. Armed force. See *Vis armata*.

**ARMATURA.** L. Lat. Armour; the use of weapons. *Towns. Pl.* 217, 228.

**ARME.** L. Fr. A weapon. *De quel arme il fuist occise*; with what weapon he was slain. *Stat. Glocest.* c. 9.

**ARMIG'.** An abbreviation of *armiger*, (q. v.)

**ARMIGER.** Lat. [from *arma*, arms, and *gerere*, to bear.] One who bears arms; an armour bearer, or shield bearer, (Lomb. *scilpor*; Sax. *schildcnave*.) *Spelman.*

An esquire, a knight's attendant. *Id.*

An esquire; one who bears arms, or coat armour, (*qui arma gerit*.) See *Esquire*.

A species of feudal tenant; a tenant by scutage, or the service of the shield; (*per servitium scuti*.) *Spelman.*

A servant, domestic or valet. *Id.* *LL. Edw. Conf.* c. 21, *ibid.*

ARMILUSTRUM. L. Lat. A showing of armour; military training. *Towns. Pl.* 215.

ARMISCARA. See *Harmiscara*.

ARMS. [Lat. *arma*.] Weapons offensive and defensive;\* anything that a man strikes or hurts with. *Co. Litt.* 161 b, 162 a. See *Arma*, *Force and arms*.

ARMUM. L. Lat. [L. Fr. *arme*.] A weapon. *Armum molutum*; a sharp weapon. *Bract.* fol. 138, 145.

ARNALIA. A misprint for *arvalia* or *aralia*; copied in many of the books. See *Aralia*.

ARPENNIS, *Arpennus*, *Arpendus*, *Arpentum*. L. Lat. An arpent; a measure of land frequently mentioned in Domesday Book. *Spelman*. Various other forms of the word occur in old laws and writers; as *arpennum*, *arpendium*, *arapennis*, *arepennis*, *aripennis*, *aripennum*, *arvipennium*, and *arvipendium*. *Id.*

ARPEN, *Arpent*. Fr. [L. Lat. *arpennis*, *arpennus*; by some derived from *arare*, to plough.] A measure of land of uncertain quantity, mentioned in Domesday and other old books; by some called an acre, by others half an acre, and by others a furlong. *Spelman*. *Cowell*. *Blount*.

A measure of land in Louisiana. 6 *Peters' R.* 763.

ARPENTATOR. L. Lat. [from *arpen*, or *arpent*, q. v.] A measurer or surveyor of land. *Spelman*, voc. *Arpennis*. *Cowell*. *Blount*.

ARRA. See *Arrha*.

ARRAGE. L. Fr. Mad or insane. *Home arrage*; a madman or lunatic. *Britt.* c. 126.

ARRAIAMENTUM. L. Lat. [from *arraiare*, q. v.] An arraying or array. *Co. Litt.* 156 a. See *Array*.

ARRAIARE. L. Lat. To array; to set in order. *Arraiatus*; arrayed. *Towns. Pl.* 215. *Arraiatio peditum*; an arraying of foot soldiers. *Pat. 1 Edw. II.*, cited in *Cowell*. See *Array*.

ARRAIGN. [L. Fr. *arener*, *arrainer*, *arraisoner*, *aresner*, from a *resn*, or *reson*, Lat. *ad rationem ponere*, to put or call to an account, (but see *infra*); L. Lat. *arrainare*, *arraniare*, *arramare*, *arreniare*, *arrenare*, qq. v.] In criminal law. To call a man to answer in form of law. To arraign a prisoner is to call him to the bar of the court, to answer the matter charged against him in an indictment. 4 *Bl. Com.* 322. 2 *Hal. P. C.* 216. 4 *Steph. Com.* 392. Or, according to Lord Coke, it is to *take order* that he appear, and for the certainty of the person, to hold up his hand, and to plead a sufficient plea to the indictment, &c. *Co. Litt.* 263 a.

In old English law. To order, or set in order; to conduct in an orderly manner; to prepare for trial; simply, to prosecute. To arraign an assise was to cause the tenant to be called to make the plaint, and to set the cause in such order as the tenant might be enforced to answer thereunto. *Litt. sect.* 442. *Co. Litt.* 262 b. Practically, it merely signified to bring an assise. See *Arrainare*, *Arramare*.

The term arraign is applied also to the old criminal proceeding by *appeal*. Thus, in the case of *Armstrong v. Lyle*, it is said "the appeal was arraigned in French by the appellant's counsel, who read the count," &c., and the reporter then proceeds to apply the term to the accused himself:—"the clerk of the crown, going to arraign him, it was objected," &c. 1 *Salk.* 60. The word, in its application to proceedings, is now obsolete.

The true etymology of arraign is a matter of considerable uncertainty. That given by Sir Matthew Hale, and adopted by Blackstone, (*a reson*, or *ad rationem ponere*,) presents a very expressive analysis of its meaning as applied to persons, and is literally sustained by the language of an old Parliament roll quoted by Cowell. *Stephanus Rabaz, vic. Leicest.* *arrenatus*, et *ad rationem positus, de hoc quod*, &c.; Stephen Rabaz, sheriff of Leicestershire, being arraigned, and put or called to answer (or to account) of this, that he, &c. *Rot. Parl.* 21 *Edw. I.* But, in the application of the word arraign to proceedings, such as assises, &c., (which is very common in the old books, though now disused,) this derivation becomes wholly inappropriate, and various others have accordingly been adopted. Cowell supposes arraign to be formed from the Fr. *arranger*, to set or put a thing in order, or in its place, answering somewhat to the modern word *arrange*. The same derivation is adopted by the author of the *Termes de la ley*.

Lord Coke says it is from the Fr. *arraigner*, to order, or set in the right place. See *supra*. And see *Astitution*. Spelman, who is very copious in his illustration of the subject, is confident of the derivation of *arraign* from the old Latin word *arramare*, corrupted into *arraniare* (the usual Latin form,) by the very slight and easy change of *m* into *n*. This opinion is remarkably confirmed by the authority of Bracton, who uses *arramare* frequently and without variation, applying it to assises and other judicial proceedings, but in no instance to persons. *Si arramaverit super eum assisam*. Bract. fol. 18. *Ad assisam quam A. arramavit versus B.* Id. fol. 110 b. See more under *Arramare*. There seems to be no doubt that this was the original form of the word, as applied to *proceedings*, at least as used in English law, although in the Register it is invariably written *arrainare*. *In assisa quam arrainavit versus N.* Reg. Orig. 198. See more under *Arrainare*. The French *arrainer*, or *arrayner*, occurs in Britton with the same application to assises. *Si le fitz doit arrainer cest assise vers ascun*. Britt. c. 70. *Si ambideux eyent arrayny assise*. Id. *ibid*. See *Arrainer*. In one passage the same author uses *arener*, in its modern sense, as applied to persons. *La soient arenes par le visconte*; they shall be arraigned there (in court) by the sheriff. Id. c. 4. But the word seems not to have been generally used in this sense until a later period. For further illustration of the original meaning of *arraign*, see *Arramare*.

**ARRAIGNMENT.** In criminal law. The form or ceremony of calling a prisoner to the bar, and (in treason or felony) making him hold up his hand, or otherwise own himself to be the party charged; reading the indictment to him, and demanding of him his plea, (guilty or not guilty,) and entering it accordingly. 4 Steph. Com. 392. Brande. According to Lord Coke, this was otherwise called *astitution*, (q. v.) Co. Litt. 262 b.

**ARRAINARE, Arramare.** L. Lat. To arraign; to conduct in an orderly manner; to prosecute, institute or bring. *Assisam arrainare*; to bring an assise, (an action so called.) *In assisa quam idem A.*,—arrainavit versus N.; in an assise which the said A. arraigned or brought against N. Reg. Orig. 198. *In quadam jurata quam idem A. arrainavit—versus S.*; in a certain jury (proceeding so called) which the said A. arraigned or brought against S. Id. 38. See Id. 186, 205.

**ARRAMARE.** L. Lat. An old Latin word of frequent occurrence in Bracton, and constantly applied to the ancient proceeding by assise; usually translated by the modern word *arraign*; *arramare* having been corrupted into *arrainare* by a very slight change in a single letter. See *Arraign*. *Ad assisam—capiendam quam A. arramavit versus B.*; to take an assise which A. arraigned [i. e. brought] against B. Bract. fol. 110 b, 111. *Ad audiendum assisam quam B.*—arramavit versus eundem A.; to hear an assise which B. arraigned [brought] against the said A. Id. fol. 111 b. See Id. fol. 177 b, 196 b, 219.

Spelman considers this word as another form of the barbarous Latin *adrhamire*, *arhamire*, and *arramire*, and derives it from the old French *arramir*, to swear, to solemnly undertake, promise or pledge. *Assisam arramare*, according to the same author, was an expression applied to both parties in that proceeding, and signified to make a solemn choice of the assise as a mode of trial, in preference to the *duellum* or *battel*, and to declare such choice openly. Spelman, voc. *Adrhamire*. So, when a criminal originally was *arraigned*, (to use the modern word,) he was allowed to choose in what way he would be tried, and when he had made his choice, and openly proclaimed it at the bar, in answer to the question, "How wilt thou be tried?" he was said *arramare*, and to be thereupon *arramatus*, (afterwards *arrainatus*, or arraigned.) This opinion has much to sustain it in the ancient practice of the courts as illustrated by Spelman, but is not easily reconcilable with the fact that the term *arraign*, in its application to criminal proceedings, has always been exclusively used to denote the act of the *court*, and not that of the *party*.

As to the meaning of the expression *assisam arramare*, so frequent in Bracton, there is less room for doubt, as that author constantly uses the expression, *portare assisam*, (to bring an assise) to denote the same thing. Bract. fol. 26, 33, 177, 196 b, 197. *Arramare* probably had a technical sense, expressive of some peculiarity of proceeding, which was figuratively used to denote prosecution generally, just as the modern expression, "to file a bill," is daily used to denote the commencement of a *suit* in equity.

**ARRAMEUR.** Norm. In old French law. A stower or stevidore; an officer anciently employed to load vessels. The business of the *arrameurs* was to dispose right, and stow closely all goods in casks, bales, boxes, bundles or otherwise; to balance both sides, to fill up the vacant spaces, and

manage everything to the best advantage. *Laus of Oleron*, art. xi., obs. 1 *Peters' Adm. Dec.* Appendix, xxv.

**ARRAY.** [L. Lat. *arraia*, *arraiamen-tum*.] In practice. A ranking, or setting forth in order; the order in which jurors' names are ranked in the panel containing them. *Co. Litt.* 156 a. 3 *Bl. Com.* 359.

The whole panel itself; the whole body of jurors summoned to attend the court. To challenge the array is to except to the whole panel of jurors. *Id. ibid.* See *Challenge*, *Panel*.

To **ARRAY.** [L. Fr. *arayer*, *araer*, *arair*; L. Lat. *arraiare*.] In practice. To rank, or set in order. To array a panel is to rank or set the jurors' names in order in the panel, the names being placed one under another. *Old N. Brev.* 157. *Termes de la ley.* 3 *Bl. Com.* 359. *Boole's Suit at Law*, 163, note.

**ARRAYER.** See *Arayer*.

**ARREARS.** *Arrearages*, *Arrearages*. [L. Lat. *arregagia*, from Fr. *arriere*, *arere*, behind.] Money remaining unpaid after it has become due; as rent behind; interest due and unpaid; the unpaid balance of an account. *Spelman*, voc. *Arregagium*. *Cowell*. This word generally implies that a part has been paid. *Webster*.

A devise of "all my arrears of rent and interest due at my death," has been held to carry the arrears of an annuity. 2 *Vesey, Sen.* 430. But a bequest of arrears of rent will not pass a bond given to secure the arrears. 4 *Vesey, Jr.* 166. Nor will the arrears of a mortgage carry the mortgage itself. 2 *Id.* 416.

**ARRECT**, *Arect*, *Arret*, *Aret*. [from L. Lat. *arrectare*, or *arretare*, q. v.] In old English law. To accuse or charge before a court. *Arrected*, *arretted*; accused or charged. *Cowell*. See *Arrectare*.

To account, reckon or consider. *Arrected*; (Fr. *rette*); accounted, reckoned, considered. "It should be *arrected* great folly in her to be ignorant of her own title." *Co. Litt.* 173 b. Lord Coke appears to have borrowed this expression from Littleton's "*il serra rette la folly*," &c. *Litt.* sect. 261.

To impute, or lay to; to lay to the charge. The French *arette* used by Littleton (sect. 665,) and elsewhere translated by Coke *arrect*, is not retained in the later editions, the word *adjudge* being substituted. *Arrect* is used in this last sense by old English writers, as Burnet and More, and in the old

translations of the Bible. *Richardson's Dict. vocc. Arette, Arrect*.

**ARRECT**, *Arrette*, *Arete*. L. Fr. Accused, or charged with a crime. *Kelham*.

**ARRECTARE**, *Arretare*. L. Lat. [from *ad*, to, and *rectare*, to charge; or *rectum*, Norm. *rette*, an accusation.] In old criminal law. To accuse or charge; to accuse before a court; to summon to court, for the purpose of accusation, (*ad rectum vocare*.) See *Ad rectum*, *Rectum*, *Rectare*. *Si aliquis arrectatus fuerit de morte alicujus*; if one be charged with the death of any person. *Offic. Coronatoris*, cited in *Spelman*, voc. *Arrectatus*.

**ARRENARE**. L. Lat. To arraign. *Arrenatus*; arraigned, accused. *Cowell*. See *Arraign*.

**ἈΡΡΕΝΟΓΟΝΙΑ**, Ἀρρενογονία. Gr. [from ἄρρεν, male, and γένος, generation.] In the civil law. The male line. *Nov.* 118, c. 1.

**ARRENTARE**. L. Lat. [from L. Fr. *arenter*, from *a*, at, and *rente*, a payment or rent.] In old English law. To rate or assess. *Stat. Marlbr.* c. 11.

To let at a certain sum, or rent; to rent. See *Arrentatio*.

**ARRENTATIO**. L. Lat. A renting or rent. *Per certam arrentationem*; by, for, or at a certain rent. *Reg. Orig.* 252, 258.

In the forest law. An arrentation; the licensing an owner of lands in a forest to enclose them with a low hedge and small ditch, under a yearly rent. *Ordin. Forest.* 34 *Edw. I.* c. 5. *Reg. Orig.* 257 b.

**ARRER**. See *Arer*.

**ARRERAGIUM**, *Arrieragium*. L. Lat. An arrearage; the balance due on an account; a residue or remainder, (*residuum*, *reliquum*.) *Spelman*. See *Arrears*.

**ARRERE**. See *Arere*, *Arriere*.

**ARRERISSEMENT**, *Arerissement*. L. Fr. [from *arrere*, back, behind.] A hindrance; delay; putting back. L. Fr. *Dict.* *Kelham*.

To **ARREST**. [L. Lat. *arrestare*, *arestare*, from Fr. *arrest*, *arest*, to stop, or stay; or according to *Spelman*, from Sax. *a*, to or until, and *rest*.] In practice. To stop or stay by authority of law. To stop

or detain a person, and restrain his liberty until he complies with some exigency of law, (*remorari, vel aliquem sistere, usque dum legi respondeat.*) *Spelman, voc. Arrestare.*

To stop or stay a legal proceeding; particularly the judgment of a court, by some rule or order of the same court. See *Arrest of judgment.*

To take, seize or apprehend a person by virtue of legal process issued for that purpose, with the view either of holding him in custody, or of compelling him otherwise to comply with the exigency of the process. To subject a person to the operation of legal process, by bringing his body within the power of the officer executing such process. See *Arrest.*

To take or seize property. *Arrest*, in this sense, occurs constantly in old English practice, (see *arrestare*;) and is common in Scotch law. *Ersk. Inst. b. 3, tit. 6.* It was also formerly used in the same sense in the state of New-York, being applied particularly to ships and vessels; but has now given place, as in England, to the word *attach*, (q. v.) 1 *N. Y. Rev. Laws*, (1813,) 130. 2 *N. Y. Rev. Stat.* [498,] 405.

**ARREST.** [L. Lat. *arrestum, arestum, arrestatio.*] In practice. The act of stopping or staying, (*sistendi actus*;) a person or proceeding by authority of law.

The restraint of a person's liberty by the actual seizure or apprehension of his body, or otherwise, in execution of some legal process.\* Arrest is well described in the old books as "the beginning of imprisonment, when a man is first taken and restrained of his liberty, by power of a lawful warrant." 2 *Shep. Abr.* 299. *Wood's Inst.* 575. *Whishaw.*

*Spelman* considers this word as signifying radically a *stopping* rather than a *seizure*, and refers to the distinction made by the civilians between an arrest and a taking or apprehension, (*differre volunt arestum a captione seu prehensione*); the latter being effected by a manual seizure, (*injectis manibus*;) the former by the mere influence of legal authority, (*authoritatis reverentia.*) The Register, however, is an old authority for the application of the word to the seizure of chattels, (see *arrestare*); and in modern practice an arrest always contemplates either an actual seizure, or what is equivalent, a restraint of the person, with a power of actual seizure, if necessary. It has been said, indeed, that in making an arrest, the officer must actually touch or seize the party's body. 3 *Bl. Com.* 288. But in modern practice, this is not held to be absolutely necessary, for if a bai-

liff come into a room, and tell a defendant he arrests him, and lock the door, it is held to be an arrest, for he is in custody of the officer. 1 *Tidd's Pract.* 219, and cases there cited. And if the defendant be in any way within the power of the officer, (as within his reach, without any actual confinement,) and submits to the arrest, it has been held sufficient. 1 *Wendell's R.* 210, 215. But see 2 *N. Hamp. R.* 317, *Woodbury, J. United States Digest, Arrest, I.*

**ARREST OF JUDGMENT.** In practice. The act of staying a judgment, or refusing to render judgment in an action at law, after verdict, for some matter intrinsic appearing on the face of the record, which would render the judgment if given, erroneous or reversible; as where the verdict differs materially from the pleadings and issue; or where the case laid in the declaration is not sufficient in point of law, to found an action upon. 3 *Bl. Com.* 393. 3 *Steph. Com.* 628. 2 *Tidd's Pr.* 918. *Mansel on Demurrer*, 162.

**ARRESTARE.** L. Lat. To arrest; to take or seize a person. *Arrestentur corpora eorum*; their bodies shall be arrested. *Stat. Westm.* 2, c. 11. *Quod ipsum Wilhelmum ubicunque inventus fuerit, arrestari faciatis*; that you cause the said William, wherever he may be found, to be arrested. *Reg. Orig.* 24 b. *Arrestari et imprisonari*; to be arrested and imprisoned. *Id.* 184 b. *Capi et arrestari*; to be taken and arrested. *Id.* 278 b.

To take or seize a chattel, as a vessel. *Navem arrestavit et sub arresto detinuit*; he arrested a vessel and detained it under arrest. *Reg. Orig.* 105. *T. Raym.* 490. To seize a horse, ox or cow. *Reg. Orig.* 94, 102. See *Id.* 127.

**ARRESTATIO.** L. Lat. [from *arrestare*, q. v.] An arrestment or arrest. *Towns. Pl.* 53.

**ARRESTEE.** In Scotch law. The person in whose hands the moveables of another, or a debt due to another, are arrested by the creditor of the latter by the process of *arrestment*. 2 *Kames' Equity*, 173, 175. See *Arrestment.*

**ARRESTER.** In Scotch law. The person or creditor in whose behalf process of *arrestment* is issued. 1 *Forbes' Inst.* part 3, b. 1, ch. 2, tit. 3. 2 *Kames' Equity*, 177. See *Arrestment.*

**ARRESTMENT.** In Scotch law. The

seizure and securing of a criminal's person, till he undergo trial, or give bail. *Ersk. Inst.* b. 3, tit. 6, sect. 2.

A process for securing moveable effects in the hands of the possessor till the property be determined. This arrestment, termed *rei servandæ causa*, is a species of sequestration. 2 *Kames' Equity*, 173.

A process issued by a creditor for the purpose of securing the moveable effects belonging to his debtor in the hands of a third person (called the *arrestee*), or a debt due his debtor by such person, and of preventing a transfer or payment until another process, called process of *forthcoming*, can be raised or obtained.\* 2 *Kames' Equity*, 173. See *Forthcoming*.

**ARRESTUM.** L. Lat. Arrest. *Spelman.* *Sub arresto detinuit*; be detained under arrest. *Reg. Orig.* 94.

**ARRET.** Fr. In French law. The judgment, decision or decree of a court. So called according to *Spelman*, because it puts the matter *at rest* after the agitation of debate or argument. *Spelman*, voc. *Arrestare*.

**ARRETARE, Arrettare, Arrectare.** L. Lat. To accuse or charge; to summon for the purpose of accusing; to summon to answer a charge.\* *Arrettati*; accused or charged. *Reg. Jud.* 30. *Arrette* is used by old English writers. *Richardson's Dict.*

**ARRHA, Arra.** Lat. In the civil law. Earnest; evidence of a completed bargain; proof of the contract of purchase and sale, (*argumentum emptionis et venditionis contractus*.) *Inst.* 3. 24. pr. 1 *Mackeldey's Civ. Law*, 170, § 178. See *Earnest*. Bracton uses the plural, *arra*. *Bract.* fol. 61 b. *Arrhæ* is used in Scotch law. *Ersk. Inst.* b. 3, tit. 3, § 5.

**ARRIAGE AND CARRIAGE.** In English and Scotch law. Indefinite services formerly demandable from tenants, but prohibited by statute 20 Geo. II. c. 50, s. 21, 22. *Holthouse. Ersk. Inst.* b. 2, tit. 6, § 42.

**ARRIERBAN, Arriereban.** Fr. [L. Lat. *arrierbannum*, *arribannum*; from *arriere*, behind, and *ban*, a proclamation.] In feudal and European law. The proclamation by which the *arriere* vassals, or inferior feudatories of a sovereign, were summoned to military service. See *Arriere vassal*.

The assembling or mustering of the vassals, in obedience to such summons.

According to *Spelman*, this word may

import, (from *arriere*, in the sense of *iterum*, again,) a repeated summons, or second proclamation, (*iterata evocatio, vel citatio posterior*); the first being simply termed the *ban*; or, (from *arriere*, in the sense of *retro*, behind,) a proclamation intended for those who remained behind after the first summons, (*qui retro manserint post bannum*.) *Spelman*, voc. *Aribannum*. It should not be confounded with *herebannum*, (q. v.)

**ARRIERE FIEF, or FEE.** In feudal law. A fief or fee dependent on a superior one; an inferior fief granted by a vassal of the king, out of the fief held by him. *Esprit des Lois*, liv. 31. cc. 26, 32. See *Subinféudation*.

**ARRIERE VASSAL.** In feudal law. The vassal of a vassal; one who held of a vassal of the crown. *Esprit des Lois*, liv. 31, cc. 26, 32.

**ARRIVE.** To come to, or reach one place from another; to come to, or reach a place by travelling or moving towards it. *Marshall, C. J.* 1 *Brock. R.* 411.

**ARROGATIO, Adrogatio.** Lat. [from *arrogare*, to take upon one's self.] In the civil law. The adoption of a person *sui juris*, which was done by imperial rescript. *Inst.* 1. 11. 1. *Id.* 3. 11. 2. See *Adoption*.

**ARROGATOR.** Lat. [from *arrogare*.] In the civil law. One who adopted by arrogation, that is, by imperial rescript. *Inst.* 3. 11. 1, 2, 3.

**ARS.** 'L. Fr. [from *arder* to burn.] Burnt. *De ceux que felonisement—eient autre bles, ou autre mesons ars*; of those who have feloniously burnt another's crops, or another's houses. *Britt.* c. 9.

**ARSÆ ET PENSATÆ.** L. Lat. Burnt and weighed. A term anciently applied to money melted, and then weighed to test its purity. See *Arsura*.

**ARSION.** L. Fr. Burning. *Artic. super chart.* c. 17. An old form of arson, (q. v.)

**ARSON.** [from L. Fr. *arsion*, *arsoun*, *arson*, L. Lat. *arsio*, from *ardere*, to burn: Sax. bernet: L. Lat. *incendium* or *combustio domorum*.] In criminal law. The malicious and wilful burning the house or outhouse of another man. 4 *Bl. Com.* 220. 4 *Steph. Com.* 141. The burning and consuming of any part is sufficient to constitute arson, but

a mere attempt to burn by setting fire to a house, unless it absolutely burns, is not sufficient. *Hawk. P. U. b. 1, c. 39. 4 Bl. Com. 222. 4 Steph. Com. 143. See 2 Russell on Crimes, 548—568, and notes.*

The English law of arson has been considerably modified in the United States; the definition of the crime being in some of the states materially enlarged, while in others, various degrees of arson have been established, with corresponding punishments. See *Wharton's Am. Crim. Law, 369, 374, et seq.*

**ARSURA.** L. Lat. [from *ardere*, to burn.] In old English law. Burning, or melting; the trial or assay of money by fire after it was coined, in order to test its purity. A term frequently used in Domesday Book. *Spelman. Reddit tot libras ad arsuram*; pays so many pounds according to the test by fire; that is, so many pounds of lawful, approved or tried money. *Cowell.*

The loss of weight occasioned by this process. A pound was said to *burn* so many pounds (*tot ardere denarios*) as it lost by the fire. *Spelman.*

**ARSURE EN LE MAIN.** L. Fr. Burn- ing in the hand. See *Burning in the hand.*

**ART AND PART.** In Scotch criminal law. A technical term used to denote an accessory before and after the fact, and also an aider and abettor in the commission of a crime; generally considered equivalent to the *ope et consilio* (q. v.) of the Roman law.\* *Ersk. Inst. b. 4, tit. 4, § 10. 2 Forbes' Inst. part 1, b. 1, c. 1.* By *art* is understood the mandate, instigation or advice that may have been given towards committing the crime; *part* expresses the share that one takes to himself in it, by the aid or assistance which he gives the criminal in the commission of it. *Ersk. Inst. ub. sup.* Though expressed in a conjunctive form, it does not however necessarily import both descriptions of guilt; since one may become *art and part*, either, 1. by giving a warrant or mandate to commit the crime; or, 2. by giving counsel or advice to the criminal how to conduct himself in it; or, 3. by his assistance in the execution of it. *Ersk. Inst. ub. sup.*

The derivation of this phrase is uncertain. Sir George Mackenzie, in his "Discourse upon the laws and customs of Scotland in matters criminal," says that by *art* is meant that the crime was contrived by the art or skill of the accused, (*eorum arte*;) and that by *part* is meant that they were *sharers*

in the crime committed, (*et quorum pars magna fui.*) By other writers it has been considered as an abbreviation of the Latin phrase *artifex et particeps*. See *P. Cyclo- pedia.*

**ARTE.** L. Fr. Bound, compelled; narrowed. *Kelham.* See *Arct.*

**ARTHEL**, [properly *Arddelw* or *Arddel.*] Brit. or Welsh. In Welsh and old English law. To avouch, (*astipulari, asserere.*) *Davies' Dict.* cited in *Cowell.*

Used also as a substantive. Thus, by the laws of Hoel Dha, it was provided that if a man were taken with stolen goods, he must be allowed a lawful *arddelw* (vouchee) to clear him of the felony. This was abolished by statute 28 *Hen. VIII., c. 6. Cowell. Blount.*

**ARTICLE.** [Lat. *articulus.*] A distinct part of a writing or instrument, consisting of two or more particulars. Hence systems of rules and instruments, composed of various particulars, or arranged in separate divisions, are called *articles*; and the term was also anciently applied to statutes drawn up in this form. See *Articles.*

A point. See *Articulus.* The French *article* and *point* are synonymous. *En chescun article et chescun point. Artic. sup. Chart. c. 1.*

A species of pleading in the English ecclesiastical courts; which is put in in the form of objection or charge, as for annulling a marriage, for depriving a clergyman of his benefice, &c. 4 *Chitty's Gen. Pr. 166, 167. 200. 209.* The word *article* is used in the formal parts of this pleading, as a verb. "We *article* and object to you the said —, that," &c. *Id. 200, et seq.* The expression "*articulately* propound" constantly occurs in pleadings in the ecclesiastical courts. *Id. 168, et seq.*

**ARTICLES.** [L. Lat. *articuli.*] A term applied to various writings drawn up in an *articulate* form; that is, under distinct heads or divisions; as

A system of rules established by legal authority; as *articles* of war, *articles* of the navy, *articles* of faith. (qq. v.)

A writing or instrument executed between parties, containing stipulations or terms of agreement; as *articles* of agreement, *articles* of partnership, the *articles* of confederation of the United States.

A statute; as having its provisions *articulately* expressed under distinct heads. Several of the ancient English statutes were called *articles*, (*articuli.*) See *Articuli.*

A complaint at law drawn up in articulate form ; as *articles* of the peace, (q. v.)

The *capitula*, chapitres or chapters given in charge to juries at the ancient eyres, were sometimes called *articles*. See *Capitula*.

**ARTICLES OF FAITH.** In English law. The system of faith of the Church of England, more commonly known as the *Thirty-nine Articles* ; framed by Archbishop Cranmer, with the assistance of other persons of distinguished learning and piety in the reign of Edward VI. ; and reduced to their present form in the Convocation of the archbishops and bishops of both provinces held at London in the reign of Queen Elizabeth, A. D. 1562. 3 *Steph. Com.* 94, 95.

**ARTICLES OF WAR.** In English law. A system of rules for the government of the army, framed under the authority of the annual statutes called the Mutiny Acts. 2 *Steph. Com.* 600, 601.

In American law. A system of regulations for the government of the army and navy of the United States. *Acts of Congress*, April 23, 1800, April 10, 1806.

**ARTICLES OF THE NAVY.** In English law. A system of regulations for the fleet, established under the statutes 22 Geo. II. c. 33, and 19 Geo. III. c. 17. 2 *Steph. Com.* 605, 606.

**ARTICLES OF THE PEACE.** In English law. A complaint exhibited under oath to a court of competent jurisdiction, or to a justice of the peace, in order to compel a party who is meditating an injury to another, to find sureties of the peace. 4 *Chitty's Bl. Com.* 251. 255, note (6.) 4 *Steph. Com.* 313. 1 *Chitty's Gen. Pr.* 674, 679, note (p).

**ARTICLES OF ROUP.** In Scotch law. The conditions under which property is exposed to sale by auction. *Wharton's Lex.*

**ARTICLES OF UNION.** In English law. Articles agreed to, A. D. 1707, by the parliaments of England and Scotland, for the union of the two kingdoms. 1 *Bl. Com.* 96. They were twenty-five in number. *Id. ibid.*

**ARTICULI AD NOVAS NARRATIONES.** L. Lat. Articles on the New Tales. The title of a small treatise on the method of pleading, subjoined to the collection called *Novæ Narrationes*. 3 *Reeves' Hist. E. Law*, 152.

**ARTICULI CLERI.** L. Lat. Articles of the clergy. The title of a statute passed in the ninth year of Edward II. for the purpose of adjusting and settling the great questions of cognizance then existing between the ecclesiastical and temporal courts. 2 *Reeves' Hist. E. Law*, 291—296. The archbishop of Canterbury preferred in the name of himself and the clergy (*clerus*) sixteen *articles*, and received by the authority of parliament answers *seriatim* to each of them, constituting the statute which hence derived its name. *Id.* 291. Lord Coke has inserted this statute in his *Institutes*, accompanying it with a commentary. 2 *Inst.* 599.

**ARTICULI DE MONETA.** L. Lat. Articles concerning money, or the currency. The title of a statute passed in the twentieth year of Edward I. 2 *Reeves' Hist. Eng. Law*, 228. *Crabb's Hist. E. Law*, 167, (Am. ed.)

**ARTICULI SUPER CHARTAS.** L. Lat. Articles upon the charters. The title of a statute passed in the twenty-eighth year of Edward I., st. 3, confirming or enlarging many particulars in *Magna Charta*, and the *Charla de Foresta* ; and appointing a method for enforcing the observance of them, and for the punishment of offenders. 2 *Reeves' Hist. E. Law*, 103, 233—241. Lord Coke has included this statute in the number of those commented on in his *Institutes*. 2 *Inst.* 537.

**ARTICULUS.** Lat. An article or point. *Reg. Orig.* 200. *In articulo mortis* ; at the point of death.

A point or moment of time. *In ipso articulo temporis* ; at the same moment or instant of time. 3 *Co.* 28.

**ARTIFICIAL PERSONS.** Persons created and devised by human laws for the purposes of society and government, as distinguished from natural persons. 1 *Bl. Com.* 123. Corporations are examples of artificial persons. *Id. ibid.*

**ARUNDINETUM.** L. Lat. [from *arundo*, a reed.] A place where reeds grow. *Co. Litt.* 4 b. *Shep. Touch.* 95.

**ARURA, Arrura.** L. Lat. [from *arare*, to plough.] A ploughing. *Una arrura* ; one day's work at the plough. *Cowell. Bract.* fol. 35 b. 230.

**AS.** Lat. In the Roman and civil law. A pound weight ; and a coin originally



weighing a pound, (called also *libra*); divided into twelve parts, called *uncia*, (ounces,) the several multiples of which were known by different names, according to their number. Thus, two *uncia*, making one-sixth of the *as*, constituted what was called *sextans*; three, making a quarter, were denominated *quadrans*; four, or a third, *triens*; five, *quincunx*; six, or one-half, *semis*; seven, *septunx*; eight, or two-thirds, *bes*; nine, or three-fourths, *dodrans*; ten, *dextans*; and eleven, *deunx*. *P. Cyclo-pædia*. *Adam's Rom. Ant.* 534, (Am. ed.) *Gravina, Orig. Jur. Civ. lib. 2, § 47.*

Any integral sum, subject to division in certain proportions. Frequently applied in the civil law to inheritances; the whole inheritance being termed *as*, and its several proportionate parts, *sextans*, *quadrans*, &c., as above explained; though it was not necessary that it should always be divided into twelve parts. *Dig. 28. 5. 50. § 2. Heinecc. El. Jur. Civ. lib. 2, tit. 14, § 541. Inst. 2. 14. 5. Hæres ex semisse*; an heir to six parts, or half of the inheritance. *Inst. ub. sup. Hæres ex asse*; an heir to the whole estate. *Pitisci Lex. voc. As.*

The term *as*, and the multiples of its *uncia* above enumerated, were also used to denote the rates of interest. 2 *Bl. Com.* 462, note (m).

**AS OF.** In practice and pleading. A term applied to proceedings, and to rights or estates, expressive of *sameness* of legal character, effect or operation; given in the way of *relation*, (in the case of proceedings,) by mere force of law, or absolutely existing (in the case of rights,) in point of fact.

Thus, in practice, proceedings are frequently allowed to take place, or acts to be done, (judgments to be signed, or rules entered,) *as of* some previous day or term, or, as it is otherwise expressed, *nunc pro tunc*, (now for then); that is, the judgment is, in point of fact, signed *now*, but signed in the *same form* as it would have been *then*, being dated *then*, and has the *same effect* given to it, as if it had been actually signed *then*. See *Nunc pro tunc*.

In pleading, the term *as of* is applied to rights and estates, to denote actual and absolute verity, or sameness of legal character. Thus, a party is said to be possessed of a thing, "*as of* his own proper goods," (*ut de bonis propriis*); by which is meant that he was possessed of them in the *same way* as one would be possessed of one's own goods; or, in other words, that the goods were, in point of fact, his own individual and absolute property. See *Holt-*

*house*. The same words, "*as of*" (L. Lat. *ut de*; L. Fr. *sicome de*;) form a part of the celebrated phrase, "*in his demesne as of fee*," which is explained in another place. See *Demesne*.

**AS AVER.** L. Fr. To wit; to say. *Cest asaver*; that is to say. *Britt. c. 126.*

**ASCAVOIR.** L. Fr. To be understood, to wit. *Est ascavoir*, (q. v.); it is to be understood. *Litt. sect. 9, 45.* Sometimes written *assaver*, *asaver* and *a saver*. *Stat. Westm. 1, c. 1. Britt. c. 89. Id. c. 126.* See *Cest ascavoir*.

**ASCENDANT.** [Lat. *ascendens*.] In the law of descents. A person related to another in the *ascending* line of kindred, as a father, grandfather, &c.: a person so related, to whom an estate *ascends* (to use the strictly proper term), as the next heir. \* *Nov. 118, c. 1, 2.*

This term is of frequent occurrence in the civil law, particularly in the 118th Novel of Justinian, the second chapter of which expressly treats of the succession of *ascendants*, (*περι των ανιόντων διαδοχης*.) It has not however been adopted to much extent in the common law, *ascend* itself, in the direct line, having been prohibited in England from a remote period, by a leading canon of inheritance, which has only recently been abolished. See *Descent*. The modern law of succession would seem to authorize its more frequent use, especially as expressive of the relation of *persons*, in preference to the word *ancestor*; leaving the latter to be employed more exclusively in its original and proper legal signification,—the former possessor (or, in the phrase of the old books, the pre-possessor) of an *estate*. See *Ancestor*. The latter meaning may perhaps have been too strictly claimed for the word *ancestor*, under its own definition, (*supra*); considering that it is not unfrequently used in the books in its popular sense,—one from whom another person is descended; a transmitter of blood, as well as of estate. True precision, however, seems to require that whenever the terms *ancestor* and *heir* are used in immediate connection, the former should be kept closely to its proper relative meaning.

**ASCRIPTICII.** Lat. A species of soke-men, or tenants in ancient demesne, described by Bracton. *Bract. fol. 7, 209.* The term is derived from the civil law, in which it was written *ascriptitii*, and *adscriptitii*, and applied to *coloni*, or tenants, whose names were registered (*ascripti*) in

the archives of the colony or district where they resided. *Cod.* 11. 49. 1 *Spence's Chancery*, 51, note (u). See *Adscriptitii*.

**ASCRIPTUS.** Lat. [from *ascribere*, to enroll.] Enrolled, registered. See *Adscriptus*.

**ASCUN, Ascuns.** L. Fr. Any one; any. *Britt.* c. 4.

Some. *Downt ascuns sount villeines, et ascuns fraunkes*; of whom some are villeins, and some freemen. *Id.* c. 83.

**ASOYNE.** See *Essoin*.

**ASPORTARE.** L. Lat. To carry away. *Asportavit*; he carried away. Applied in the old writs of trespass, to the taking of inanimate things, as distinguished from *abducere*, (q. v.) *F. N. B.* 86 A. note. *Id.* 88 B. *Bract.* fol. 167. See *Cepit et asportavit*. *Asportatus*; carried away. See *De bonis asportatis*.

**ASPORTATION.** . [L. Lat. *asportatio*, from *asportare*, to carry away.] The carrying away of goods; one of the circumstances requisite to constitute the offence of larceny. 4 *Bl. Com.* 231. A bare removal by the thief from the place in which he found the goods, though he does not quite make off with them, is a sufficient *asportation*, or carrying away. *Id. ibid.*

A carrying quite away. 1 *Stra.* 634.

**ASSACH.** See *Assath*.

**ASSAIA, Assaya.** L. Lat. An assay or examination. *Assia et assia panis*; the assise and assay of bread. *Cowell. Blount. Assaia mensurarum et ponderum*; the assay of measures and weights. *Reg. Orig.* 280.

**ASSAIER, Assayer.** L. Fr. To try or essay; to endeavor or attempt. *Assaiant*; trying, essaying. *Assay, assaye*; endeavored. *En assaie*; on trial. *Kelham*.

**ASSALLIRE.** L. Lat. To assault. *Spelman.* See *Adallire*.

**ASSALTUS.** L. Lat. An assault. *L.L. Edw. Conf.* c. 12. *Spelman.* *Assultus* is the Latin of the feudists. *Zasius de Feudis*, p. 10, m. 38. *Cowell.* *Insultus* is the Latin of the old common law writs. See *Insultus*.

**ASSART, Essart.** [L. Lat. *assartum, essartum, exartum*.] In English forest law.

An offence committed in the forest, by pulling up by the roots the woods that are thickets and coverts for the deer, and making them plain, (that is, clear) as arable land. *Manwood*, p. 2, c. 9, n. 1. *Termes de la ley. Cowell.* 1 *Crabb's Real Prop.* 486, 487, § 627.

The land itself so *assarted*, that is, cleared and prepared for, or reduced to cultivation. *Cowell*.

This word is written *assert* in the *Charta de Foresta*, (9 Hen. III. c. 4.) and in *Manwood*, with which the Latin *assertare* of the Register corresponds. *Reg. Orig.* 257. According to *Spelman*, *essart* may have been its original form. Its etymology is uncertain. *Manwood* supposes it to be from the French *assartir*, to make plain. *Spelman*, who writes the word *assartum*, derives it from the Fr. *assarter*, corresponding with the Latin *interluicare*, to thin woods by cutting trees at intervals, so as to admit the sun, (*ita ut sol. interluceat*); to cut down woods; to clear of thickets; to bring rough and uncultivated grounds into a proper state for cultivation. He also makes the word *essartum* to be derived from the Lat. *exertum*, pulled up by the roots; eradicated. *Spelman*, voc. *Essartum*. Mr. Somner thinks *exartum* to be a contraction of *exaratum*, ploughed up, from *exarare*, to plough up, to which opinion *Dufresne* also inclines. *Cowell*.

To ASSART. [L. Lat. *assartare, assertare, exartare, sartare*.] In forest law. To pull up by the roots; to cut down and eradicate woods; to clear land of trees, thickets, &c., and prepare it for, or reduce it to tillage. *Cowell. Spelman*, voc. *Essartum*. 1 *Crabb's Real Prop.* 486, 487, § 627. See *Assartare*.

**ASSARTARE, Assertare, Exartare.** L. Lat. To assart, or remove by the roots; to clear land. See *To assart*. *Assertare et in culturam redigere*; to assart and reduce to cultivation. *Reg. Orig.* 257. *Assertatum*; assarted or cleared. *Id. ibid.*

**ASSARTUM, Essartum, Exartum.** L. Lat. Assart; land cleared of its wood and converted to tillage. *Assartum est quod redactum est ad culturam. Fleta*, lib. 4, c. 21. *Boscus—efficitur assartum*; a wood is made (converted into) assart. *Bract.* fol. 226. Sometimes termed *disbocatio. Cowell*.

**ASSATH, Assaith, Assach.** A custom of purgation formerly used in Wales, by which a party accused cleared, or purged himself by the oaths of three hundred men.

It prevailed to the reign of Henry V., when a statute was passed forbidding its continuance. *Stat. 1 Hen. V. c. 6. Spelman. Cowell.*

**ASSAULT.** [from Fr. *assailier*, or *assailir*, to assail or attack; L. Lat. *assaltus*, *assultus*, from *assilire*, to leap at, or against; or *insultus*, from *insilire*, to leap upon.] An unlawful setting upon one's person. *Finch, Law*, 202. An intentional attempt, by violence, to do a corporal injury to another. *Wharton's Amer. Crim. Law*, 311. 1 *Hill's N. Y. R.* 351. An attempt or offer, with force and violence, to do a corporal hurt to another, as by striking at him, with or without a weapon, or presenting a gun, &c. *Hawk. P. C.* b. 1, ch. 62, s. 1, 2. *Bac. Abr.* Assault, A. An attempt or offer to beat another, without touching him; as if one lifts up his cane or his fist in a threatening manner at another; or strikes at him, but misses him. 3 *Bl. Com.* 120. 3 *Steph. Com.* 469. If the person be actually touched, it is a *battery*. See *Battery*.

**ASSAY.** [L. Lat. *assaia*, *assaya*; from Fr. *assaye*, *assaie*, *essay*, a proof or trial.] In old English law. An examination, proof or trial.

A trial of weights and measures by a standard; as by the constituted authorities, clerks of markets, &c. *Reg. Orig.* 280. See *Assaia*.

A trial or examination of certain commodities, as bread, cloths, &c. *Cowell. Blount.* See *Assaia*.

A trial or test of the purity of metals and of coined money. This is the only sense in which the word is now used.

**ASSAYATOR.** L. Lat. An assayer. *Assayator regis*; the king's assayer. *Cowell.*

**ASSAYSIARE.** L. Lat. To associate; to take or select as fellow-judges, or assessors. *Cowell.*

**ASSECURARE, Adsecurare.** L. Lat. To make secure, (*securum facere*). *Spelman.*

To assure or secure by pledges, or any solemn interposition of faith. *Cowell.*

To confirm or establish. *Reg. Orig.* 107 b. See *Adsecurare*.

**ASSECURATIO.** L. Lat. [from *assecurare*, q. v.] Assurance: a making secure. See *Assurance*. *Assecuration* is used by old English writers. *Richardson's Dict.*

In old maritime law. Assurance or insurance of a vessel or cargo; a voyage in-

sured. *Independenter se habet assecuratio a viaggio navis*; the voyage insured is a distinct thing from the voyage of the ship. *Casaregis Disc.* 67, n. 5, 31. 3 *Kent's Com.* 318, note.

**ASEEDATION.** In Scotch law. A setting or letting for hire; another name for a *tack* or lease. 1 *Forbes' Inst.* part 2, b. 2, c. 4, tit. 4, § 6. *Ersk. Inst.* b. 2, tit. 6, § 20.

**ASSEMBLY, UNLAWFUL.** [L. Lat. *illicita congregatio*.] In criminal law. The assembling of three or more persons together to do an unlawful act, who separate without actually doing it, or making any motion towards it. 3 *Inst.* 176. 4 *Bl. Com.* 146. *Cowell.*

Any meeting whatsoever of great numbers of people, with such circumstances of terror as cannot but endanger the public peace, and excite alarm and consternation in the neighborhood.\* 4 *Steph. Com.* 278. *Wharton's Am. Crim. Law*, 523. See *Id.* book 5, ch. 4.

**ASSENER.** See *Assigner*.

**ASSENT.** (L. Fr. *assenter*), distinguished by Britton from *consent* (*concenter*). *Britt.* c. 92.

**ASSER, Asseer, Asseoir.** L. Fr. To settle or fix; to ascertain or assess. *Kelham.*

**ASSERTARE.** L. Lat. To assart. *Assertatum*; assarted. *Reg. Orig.* 257. See *Assart*.

**ASSES, Assez.** L. Fr. Enough; an equivalent; satisfaction or compensation. *Il est tenu de faire asses a la feme, de ses damages*; he is bound to make satisfaction to the woman, for her damages. *Britt.* c. 103.

**ASSESS.** [L. Lat. *assidere*, *assedare*.] To rate, or tax; to fix or settle a sum to be levied, or paid.

**ASSESSE, Asses.** L. Fr. Assessed; affeered. *Stat. Westm.* 1, c. 18.

**ASSESSMENT OF DAMAGES.** In practice. The fixing or settling by a court or jury, of the amount of damages to be paid by the defendant or defeated party in an action.

Assessment by the court is either made directly by the court itself, or more commonly through its clerk, master or protho-

notary, to whom a cause is referred for that purpose. This proceeding takes place after judgments by default, in cases where the amount claimed by the plaintiff is a mere matter of calculation, not calling for the intervention of a jury, as in actions on bills of exchange and promissory notes. 1 *Tidd's Pr.* 570. 1 *Burr. N. Y. Pr.* 372.

Assessment by a jury takes place either on the trial of a contested cause, at the time of giving the verdict; or on inquests, where a verdict is taken by default; or before the sheriff or under-sheriff, upon a writ of inquiry issued after judgment by default. 1 *Tidd's Pr.* 570, 573. 1 *Burr. Pr.* 375. See *Writ of inquiry*.

**ASSESSORES, Adsessores.** Lat. [from *assidere*, to sit by.] In the civil law. Persons who sat with the Roman prætor, or other magistrate, for the purpose of assisting him with their advice in the decision of causes. *Dig.* 1. 22. *Cic. de Orat.* i. 37.

**ASSESSORS.** In Scotch and English law. Persons skilled in the law, appointed to advise and direct the decisions of the judges of inferior courts. *Scotch Dict.* *Wharton's Lex. Brande.* The term and practice are both derived from the civil law. See *Assessores*.

**ASSETS.** [from Fr. *assez*, *asses*, enough.] Goods or lands in the hands of an executor, administrator or heir, *sufficient* (*assez*) to discharge the debts and legacies of the testator, intestate or ancestor, or some part thereof; or *sufficient* to charge the executor, administrator or heir, (that is, to make him liable,) to the extent of the property. *Cowell. Blount. Shep. Touch.* 496. *Loveless on Wills*, 38. 2 *Bl. Com.* 244, 510. 1 *Story's Eq. Jurispr.* § 531. The real and personal property of a party deceased, which, either in the hands of his heir or devisee, or of his executor or administrator, is chargeable with the payment of his debts and legacies. 2 *Steph. Com.* 244, note (z). *P. Cyclopaedia*.—In an accurate and legal sense, all the personal property of the deceased which is of a saleable nature, and may be converted into ready money, is deemed *assets*. But the word is not confined to such property; for all other property of the deceased which is chargeable with his debts or legacies, and is applicable to that purpose, is, in a large sense, *assets*. 1 *Story's Eq. Jur.* § 531.

The property or effects of a bankrupt or insolvent, applicable to the payment of his debts.

In a larger sense, the property or effects of any individual or corporation, available

for the payment of his or its liabilities.\* These last are rather the popular than the legal significations of the term.

Assets are either *personal, real, legal* or *equitable assets*, (qq. v.)

— This word presents a striking instance of entire loss of original and strictly appropriate meaning, and the acquisition of a new and opposite sense. *Assets*, according to the oldest definitions, once literally signified what its etymology indicates,—property of a deceased person *sufficient* (*assez*) to pay his debts and legacies. *Termes de la ley*. So, where land descended to an heir was *as much in value* as other land sold by the ancestor, it was for that reason called *assets per descent*, that is, equivalent, (*quod tantundem valet*.) *Bract.* fol. 376 b, 377. *Co. Litt.* 374 b. 2 *Bl. Com.* 244. By subsequent definitions a qualification was introduced, which the continued use of the word rendered obviously necessary. Thus, *Shepard* defines it to be “goods or chattels sufficient to pay the debts, or some part thereof.” *Shep. Touch.* 496. So *Stephen*, “sufficient (to some extent at least) to satisfy the debt.” 1 *Steph. Com.* 396. *Blackstone* retains the idea of *sufficiency*, but gives it a new application, viz. to the liability of the executor, &c. 2 *Bl. Com.* 510. See the definition *supra*. Other modern definitions have dropped the idea of *sufficiency* entirely; and *assets* is now constantly used to signify any property, estate or fund applicable to the payment of debts, though quite *insufficient* in amount or value for the purpose. The entire departure from original meaning appears very palpably in the common expression, “an insolvent's or bankrupt's assets.”

**ASSETS ENTRE MAINS.** L. Fr. Assets in hand; assets in the hands of executors or administrators, applicable for the payment of debts. *Termes de la ley*. 2 *Bl. Com.* 510. 1 *Crabb's Real Prop.* 23, § 31. Called in modern law, *personal assets*, (q. v.)

**ASSETS PER DESCENT.** L. Fr. Assets by descent. Lands in the hands of an heir chargeable with the payment of the debts of the ancestor; otherwise called *real assets*, (q. v.) Thus, where a man has bound himself and his heirs in any obligation in writing, for the payment of a certain sum, and he dies seised of lands in fee simple which descend to his heirs, these lands, when in the hands of the heir, will be liable to the payment of that sum. 2 *Bl. Com.* 243, 244, 340. 1 *Steph. Com.* 396, 397. *Co. Litt.* 374 b. In other words, assets by de-

scant are liable to those debts only which are secured by specialty, as bond or covenant binding the party's heirs; but assets in the hands of executors and administrators are liable to all debts. *Brande.*

**ASSEWIARE.** L. Lat. To draw or drain out water from marshy grounds. *Cowell. Blount.*

**ASSEZ,** *Asses, Assetz, Assietz, Asses.* L. Fr. Enough; sufficient. *Kelham.* See *Asses.*

**ASSIDERE.** L. Lat. To assess; to fix, settle, define, determine, or reduce to a certainty, either in point of time, number, amount, quantity, quality, &c. *Assidere, taxare et levare*; to assess, tax and levy. *Reg. Orig.* 188. 1 *Ld. Raym.* 147. *Assensus*; assessed. Properly *assius*, (q. v.) *Assidenda*; to be assessed. 1 *Str.* 201. In the old Latin records of verdicts in civil actions, the literal translations of which are still used, the entry was, after stating that the jury found for the plaintiff, "*et assidunt damna*," (and they assess the damages) at so much; and then the judgment of the court was given for the damages "*per juratores predictos in forma predicta assessas*;" (by the jurors aforesaid in form aforesaid assessed.) *Towns. Pl.* 494.

To **ASSIGN.** [Lat. *assignare*; L. Fr. *assigner*, qq. v.] In conveyancing. To make or set over to another; to transfer; as to assign property, or some interest therein. *Cowell.* 2 *Bl. Com.* 326. See *Assignee, Assignment.*

In practice. To appoint, allot, select or designate for a particular purpose, or duty. Thus, in England, justices are said to be "assigned to take the assizes," "assigned to hold pleas," "assigned to make gaol delivery," "assigned to keep the peace," &c. *Stat. Westm.* 2, c. 30. *Reg. Orig.* 68 b, 69. 3 *Bl. Com.* 58, 59, 352. 1 *Id.* 351. *Cowell.* So, a court is said to assign a prisoner counsel.—To appoint a time; as, to assign a day.

To point at, or point out; to set forth, or specify; to mark out or designate; as to assign errors on a writ of error; to assign branches of a covenant. 2 *Tidd's Pr.* 1168. 1 *Id.* 686. To assign false judgment, in old practice, was to declare how and where the judgment was unjust. *Old N. Br.* 17. To assign waste was to show wherein especially the waste was committed. *Reg. Orig.* 72 b, nota. To assign a perjury is a phrase still used. *Stat. 9 Ric. II.* c. 3.

In the phrase "to assign dower," the

word is used in the two last senses; the widow's portion being set or marked out, that is, designated by metes and bounds, or other description, and so allotted or appointed for her use. But it has not the sense of *transfer*, as the estate does not pass by the assignment. 4 *Kent's Com.* 69. See *Assignment of Dower.*

**ASSIGN.** [L. Fr. *assigne*; L. Lat. *assignatus*.] Used formerly in the sense of *assignee*, but now obsolete. 1 *Str.* 460. The plural *assigns* is still retained in deeds, bonds and other instruments. See *Assignee, Assigns.*

**ASSIGNARE.** Lat. [from *ad*, to, and *signare*, to mark.] In the civil law. To assign, allot, or appoint. *Assignare libertum*; to assign a freedman to a particular child. *Inst.* 3. 9. pr.

**ASSIGNARE.** L. Lat. In old practice and conveyancing. To assign; to transfer or make over. *Cui terram illam dare vel assignare voluerit*; to whom he will give or assign that land. *Bract.* fol. 17 b. *Id.* fol. 18 b.

To assign; to allot, appoint, or designate. *Assignavimus vos justitarios nostros, ad inquirendum*; we have assigned you our justices to make inquiry. *Reg. Orig.* 123. *Assignavimus—ad itinerandum*; we have assigned to itinerate. *Bract.* fol. 109.

To assign; to mark out, set off, allot or set over, as a widow's dower. *Vir dotem dat et constituit, hæres autem tantum dotem assignat*; the husband gives and establishes dower; the heir only assigns it. *Bract.* fol. 300 b.

**ASSIGNATI.** L. Lat. [plur. of *assignatus*, q. v.] Assigns; assignees. *Bract.* fol. 20, 21, 37 b. See *Assigns.*

**ASSIGNATIO.** Lat. and L. Lat. [from *assignare*, q. v.] An assigning or assignment. *Inst.* 3. 9. *Assignatio dotis*; assignment of dower. *Bract.* fol. 314. *Ex assignatione*; from, or on the assignment. *Reg. Orig.* 73, 75 b. *Dyer*, 206 b. *Per assignationem*; by the assignment. 1 *Ld. Raym.* 367.

**ASSIGNATION.** In Scotch law. An alienation, transfer or conveyance, particularly of a debt or moveable subject; an assignment.\* *Ersk. Inst.* b. 2, tit. 7. *Id.* b. 3, tit. 5. By assignment, in proper speech, is understood a written deed of conveyance by the proprietor to another, of any subject not properly feudal. *Id. ibid.* § 1.

**ASSIGNATUS.** Lat. and L. Lat. [from *assignare*, q. v.] An assignee. *Towns. Pl.* 28.

A person assigned or appointed to a particular duty. *Ad placita tenenda assignatis*; assigned to hold pleas. *Reg. Orig.* 68 b.

In the civil law. A person assigned or set over to another, as a freedman to a particular child. *Inst.* 3. 9.

**ASSIGNEE,** (and formerly,) **ASSIGN.** [L. Fr. *assigne*; L. Lat. *assignatus*; Scotch, *assigny*.] A person to whom some right or property is assigned, transferred or made over by another; or according to the old definition, "he to whom a thing is appointed or assigned to be used, paid or done." *Termes de la ley.* *Cowell.* Assignees are either by deed; or in law. See *infra*.

In old law. A person deputed or appointed by another to do any act, or perform any business. *Blount.* An assignee, however, was distinguished from a deputy, being said to occupy a thing in his own right, while a deputy acted in right of another. *Perkins, tit. Grants. Cowell.*

*Assignee by deed,* (in deed or in fact,) is the person to whom some right, title or property is made over, or assigned by another by some deed or instrument in writing, which is hence called an *assignment*, and the party assigning the assignor.\* *Termes de la ley. Cowell.*

*Assignee in law* is the person to whom some right or property is transferred, or upon whom it devolves by the mere operation of law, and without any express conveyance. In this sense, an executor is the assignee of the testator; an administrator, of the intestate. *Dyer*, 6. *Hob.* 9 b. *Termes de la ley. Cowell.* See *Assigns*.

**ASSIGNER,** *Assiner, Assener.* L. Fr. assign. *L. Fr. Dict. Kelham.*

**ASSIGNMENT.** [L. Lat. *assignatio*.] In conveyancing. A transfer or making over by one person to another, of any property real or personal, in possession or action, or of any estate or right therein.\*

A transfer or making over to another of the right one has in any estate [in lands or tenements;] but it is usually applied to an estate for life or years. *2 Bl. Com.* 326. Dr. Wooddeson restricts the proper meaning of *assignment*, to "the transfer of the interest which any one has in the unexpired residue of a term or estate for years." *2 Wooddes. Lect.* 170, 171. See *Watkins on Conv.* b. 2, ch. ix. Mr. Stephen has otherwise modified the definition of Black-

stone, making an assignment to be "properly a transfer or making over to another, of one's whole interest [in lands or tenements,] whatever that interest may be; but it is usually applied to express the transfer of an estate for life or years." *1 Steph. Com.* 485.

A transfer or making over by one person to another, of a chattel personal, or chose in action; as of an article of merchandise, or household furniture, a ship, a copy-right or patent right, a bond, a note, and the like. *2 Steph. Com.* 104.

A transfer or making over by a debtor, of all his property and effects, to one or more assignees in trust for the benefit of his creditors. *2 Story's Eq. Jur.* ch. 28.

The instrument or writing by which a transfer of property is made. In real estate conveyancing, an assignment is a species of deed, and is classed by Blackstone and other writers, among common law conveyances of a secondary or derivative character. *2 Bl. Com.* 310, 326. In the transfer of personal property, the instrument of assignment is frequently of an equally formal character, though it is more commonly termed a *bill of sale*, (q. v.) *2 Steph. Com.* 104. In some cases, however, it is made in the form of a mere note or memorandum, and in the case of a negotiable bill or note, the assignment is effected by the mere endorsement of the assignor's name. *Id. ibid.* 105. *U. S. Digest, Assignment, II.*

In an assignment of real estate, the operative words are "assign, transfer and set over;" though usually the word "grant" is inserted; but any words which show an intention to pass the property, will amount to an assignment. *Watkins on Conv.* (by Preston,) b. 2, ch. ix. In assignments of chattels, the ordinary words are, "grant, bargain and sell, assign, transfer and set over." *Id. ibid.*

**ASSIGNMENT OF DOWER.** [L. Lat. *assignatio dotis*.] The marking out and laying off of one third part of a man's lands as the dower of his widow; designating it by metes and bounds, or other sufficient description, and allotting it to her as her portion.\* This assignment may be made in pais, by parol, by the heir or devisee, or other persons seised of the lands subject to dower; or it may be made by a course of judicial proceeding, where a voluntary assignment is refused. But the estate does not pass by the assignment, the dowress being in intendment of law, of the seisin of her husband; and this is the reason that neither livery nor writing is essential to the

validity of an assignment *in pais*. 4 *Kent's Com.* 63, 69.

**ASSIGNMENT OF ERRORS.** In practice. The statement of the plaintiff's case on a writ of error, setting forth the errors complained of; corresponding with the declaration in an ordinary action. 2 *Tidd's Pr.* 1168. 3 *Steph. Com.* 644.

**ASSIGNS.** [L. Fr. *assignes*; L. Lat. *assignati*.] In conveyancing. A word nearly or quite synonymous with *assignees*, and formerly sometimes so written; both words probably being only different pronunciations of the Fr. *assignes*. *Termes de la ley*. Its use is now confined to conveyancing, (as in the common expressions "heirs and assigns," "executors, administrators and assigns,") in which branch of the law it has been employed from a very remote period. See *infra*.

Where a party in a deed covenants for himself, his executors, administrators and assigns, the word *assigns* means any person to whom the property or interest described in the deed, may happen at any future time to be assigned, either by deed or by operation of law. *Holthouse*. Under the word *assigns*, are included not only assignees, properly so called, but executors and administrators, the assignee of an assignee in *perpetuum*, the heir of an assignee, the assignee of an heir, the assignee of an assignee's executor, and a devisee. *Hob.* 9 b. *Co. Litt.* 384 b. *Plowd.* 287, 288. 5 *Co.* 16, 17 b. 2 *Show.* 39, 57. *Godbolt*, 161.

The word *assigns* occurs in most of the forms of charters in Bracton and Britton, with various modifications no longer used. Thus,—"*tali, et hæredibus suis, et assignatis, et hæredibus assignatorum*;" to such a one, and his heirs and assigns, and the heirs of his assigns. *Bract.* fol. 37 b. "*Tali, et hæredibus suis et assignatis, et eorum hæredibus, et assignatis assignatorum, et hæredibus eorum*;" to such a one, and his heirs and assigns, and their heirs, and the assigns of his assigns, and their heirs. *Id. ibid.* So,—"*a ses heires, et a ses assignes, et as assignes des assignes*"; to his heirs and to his assigns, and to the assigns of his assigns. *Britt.* c. 39. The introduction of this word into deeds, as a necessary word of form, probably grew out of the ancient doctrine that if a man's assigns were not specified in the purchase deed, he was not empowered to alienate. *Mirr.* c. 1, § 3. 2 *Bl. Com.* 289. This appears from Bracton to have been particularly the case with bastards, who could not assign land given to them, unless this

were allowed by the terms of the gift, (*nisi hoc permisum esset per conditionem, et per modum donationis*); that is, by express words denoting liberty of assignment; and the same author remarks, as worthy of notice, that this kind of gift was first invented in favor of that description of persons. *Bract.* fol. 20 b. Britton, with less explanation of the reason, asserts more positively that the word *assigns* was first allowed to be put in feoffments in favor of bastards; (*car pur favour de bastars fuerent primes assignes grauntes a mettre en feffementes*.) *Britt.* c. 4.) Cowell, who makes no reference to Bracton, seems to have misunderstood Britton on this point. See *Cowell, in voce*.

**ASSIGNY.** In Scotch law. An assignee. 1 *Forbes' Inst.* part 3, b. 1, c. 1, tit. 2, sect. 1.

**ASSIS, Assise, Assys.** L. Fr. Fixed, set, appointed; affeered, assigned; situated. *L. Fr. Dict. Kelham*.

**ASSISA.** See *Assisus*.

**ASSISA.** L. Lat. [L. Fr. *assise, assis*.] In old English law and practice. An assise; a species of jury or inquest. *Assisa venit recognitura*, or *ad recognoscendum*; the assise comes, or came to recognize. *Litt.* sect. 234. 7 *Co.* 1. 9 *Id.* 1. Distinguished from the common *jurata*, or jury; though it was often turned into it. *Vertitur assisa in juratam*; the assise is turned into a jury. *Bract.* fol. 210 b. 3 *Bl. Com.* 402. *Cadit assisa, nec est capienda ut assisa, sed vertitur in juratam*; the assise falls, nor is it to be taken as an assise, but is turned into a jury. *Bract.* fol. 192 b. *Videndum erit utrum assisa capiatur in modum assise vel in modum jurate*; it must be considered whether the assise be taken in the manner of an assise, or in manner of a jury. *Id.* fol. 215 b. See *Assise*. Britton has a chapter entitled "*De assises tournes en jures*." *Britt.* c. 51. *Magna assisa*; the grand assise. (q. v.) Distinguished by Bracton from the *inquisitio patria*. *Bract.* fol. 15 b.

A species of writ, or real action. *Assisa nova disseysina*; an assise of novel disseisin. *Bract.* lib. 4, tract. 1. *Assisa ultime presentationis*; an assise of darreign presentment. *Id.* lib. 4, tract. 2. *Assisa cadere*; to fail in an assise. See *Cadere*. This kind of assise is frequently termed by Glanville, *recognitio*. 1 *Reeves' Hist. E. Law*, 186.

A court, or the sittings of a court. *Usque ad primam assisam*; until the first

*assise. Reg. Orig.* 196 b. *Bract.* fol. 179. *Assisa generalis* is mentioned by Sir William Blackstone as an old name of parliament, on the authority of Glanville, whom he cites. *Glanv.* lib. 9, c. 10. 1 *Bl. Com.* 148, note (g). The same passage however is cited by Spelman as an illustration of the use of the word *assisa* in the sense of a statute or ordinance; which is confirmed by the authority of Bracton. See *infra*.

A statute, ordinance or law. *Per nullam assisam generalem*; by no general law. *Glanv.* lib. 9, c. 10. *Assisæ, statutæ et juratæ*; assises, ordained, and sworn [to be kept.] *Bract.* fol. 120 b. *Leges et constitutiones, et assisas in regno provisas, et approbatas, et juratas.* *Id.* fol. 55 b. See 1 *Reeves' Hist. Eng. Law*, 86, 215. *Spelman*, voc. *Assisa*.

A fixed or specified time, (*tempus definitum*). *Glanv.* lib. 13, c. 32. *Spelman*.

A fixed or certain number. *Spelman*.

A specified or determinate quantity, quality, weight, measure, price, &c., required by law in certain commodities. *Spelman*. See *Assisa venalium*.

A tax or tribute, as fixed by law. *Spelman*.

A fine or mulct. *Id.*

*ASSISA DE CLARENDON.* The assise of Clarendon. A statute or ordinance passed in the tenth year of Henry II., by which those that were accused of any heinous crime, and not able to purge themselves, but must abjure the realm, had liberty of forty days to stay and try what succour they could get of their friends towards their sustenance in exile. *Bract.* fol. 136. *Co. Litt.* 159 a. *Cowell*. This must not be confounded with the *assises of Clarendon*, as the famous constitutions of that name were sometimes called. See *Clarendon*.

*ASSISA FORESTÆ, or de Foresta.* L. Lat. Assise of the forest. A statute or ordinance concerning the royal forests, passed in the thirty-fourth year of Edward I. *Co. Litt.* 159 b. Otherwise called *Ordinatio Forestæ*. 2 *Reeves' Hist. Eng. Law*, 106, 107. See *Ordinatio Forestæ*.

*ASSISA FRISCÆ FORTIÆ.* L. Lat. Assise of fresh force. *Reg. Orig.* 16 b. See *Assise of fresh force*.

*ASSISA MORTIS ANTECESSORIS.* L. Lat. Assise of mort d'ancestor. *Bract.* lib. 4, tract. 3. Called also *assisa de morte antecessoris*. See *Assise of mort d'ancestor*.

*ASSISA NOVÆ DISSEISINÆ.* L. Lat. As-

sisse of novel disseisin. *Bract.* lib. 4, tract. 1. Called also *assisa de nova disseisina*. See *Assise of novel disseisin*.

*ASSISA PANIS ET CEREVISIÆ.* L. Lat. Assise of bread and ale, or beer. The name of a statute passed in the fifty-first year of Henry III., containing regulations for the sale of bread and ale; sometimes called the statute of bread and ale. *Co. Litt.* 159 b. 2 *Reeves' Hist. Eng. Law*, 56. *Cowell. Bract.* fol. 155. Spelman considers the statutes passing under the names of *assisa panis, assisa vini et cervisiæ, &c.*, to belong to an earlier period.

The power or privilege of assising or adjusting the weights and measures of bread and beer. *Cowell*.

*ASSISA ULTIMÆ PRÆSENTATIONIS.* L. Lat. Assise of dower presentment. *Bract.* lib. 4, tract. 2. Called also *assisa de ultima præsentatione*. See *Assise of dower presentment*.

*ASSISA UTRUM.* L. Lat. Assise of *utrum*. *Bract.* lib. 4, tract. 4. See *Assise of utrum*.

*ASSISA VENALIUM.* L. Lat. The assise of saleable commodities, or of things exposed for sale. The regulation of the sale of certain articles, (usually the common necessities of life,) by public authority; defining or fixing the quantity, weight, quality, &c., to be sold for a certain price. A phrase formerly in frequent use in old English, Scotch and continental law. *Spelman* voc. *Assisa*.

*ASSISATUM.* L. Lat. That which is fixed or established. *Spelman*.

*ASSISE.* L. Fr. Situated. *De la ville ou son castle est assise*; of the town where his castle is situated. *Stat. Westm.* 1, c. 7. See *Assisus*.

*ASSISE, Assize.* [L. Fr. *assise, assis*; L. Lat. *assisa*, from *assidere*, to sit together, according to Coke; or from Fr. *assis*, placed, put, settled, fixed, established, according to Spelman.] In English law and practice. A species of jury, or inquest. *Litt.* sect. 234. A species of writ, or real action. *Id.*

The proceedings in court upon a writ of assise. *Co. Litt.* 159 b.

The verdict or finding of the jury in a writ of assise. 3 *Bl. Com.* 57.

A court, or the sittings of a court. *Spelman*.

An ordinance, or statute. *Id.*



Any thing fixed, or reduced to a certainty, in point of time, number, quantity, quality, weight, measure, &c. *Id.*

A tax, or tribute. *Id.*

A fine. *Id.* See *Assisa*.

These various significations of the word *assise*, which is called by Littleton (sect. 234) *nomen æquivocum*, will be considered more at large under the following heads.

**ASSISE.** A species of jury; a certain number of men, usually twelve, summoned to try a cause, and who sat together for that purpose.\* *Co. Litt.* 153. 3 *Bl. Com.* 185. Lord Coke derives the word, in this sense, from *assidere*, to sit together. *Co. Litt. ub. sup.* Spelman derives it from *assisus*, fixed or settled, because the number of jurors, which anciently was uncertain and indefinite, was, by the law establishing the assise, fixed and defined (*assisus et definitus*); and in this he is supported by Skene. See *Ersk. Inst.* b. 4, tit. 4, § 92. The idea of certainty is also prominently presented by the definition of the Grand Coustumier of Normandy, though it is a certainty of time and place, rather than of persons. "*Assise* is an assembly of knights and other substantial men, with the bailiff or justice, in a certain place, and at a certain time appointed." *Grand Coust.* c. 24, cited in *Cowell*. Mr. Reeves, on the authority of Glanville, says a jury was called an *assise* from the *assisa*, or law by which the application of this trial was ordained. 1 *Reeves' Hist. Eng. Law*, 84.

The *assise*, properly so called, was introduced by Henry II. as a substitute for the *duellum* or *battel*, and was established particularly for the trial of questions of seisin of land. *Glanv.* lib. 2, c. 7. It was otherwise termed *recognitio*, and the persons composing it *recognitores*. 1 *Reeves' Hist. Eng. Law*, 86. The common jury, (*jurata patriæ*, or *inquisitio patriæ*), had been previously in use, and was commonly resorted to as a mode of trial, in other instances than those provided for by the law of Henry II. *Id. ibid.* The distinction between an *assise* and a *jury* is clearly drawn in the old books, and was a very common point of learning in the reign of Henry III. It was substantially this:—an *assise* was the regular mode of trying the main issue in questions of seisin; a *jury* was used to determine any incidental question arising in the cause, upon which issue might be taken, as where an exception was taken by the tenant out of the *assise*, as it was called. Thus, if the tenant at once denied that he had committed any disseisin, he simply put himself upon the *assise*, and the *assise* proceeded, as they

called it, *in modum assise*, (in the ordinary manner of an assise), that is, upon the simple question of disseisin. *Bract.* fol. 184 b, 215. But if the tenant took an exception upon some collateral matter, as if he offered the common exception or plea that the demandant or plaintiff was a villein, this question was not triable by the assise, but by a common jury. *Id.* fol. 192 b, 215. It became, however, the practice to allow the assise itself to discharge the office of a jury in such cases, and it was then said, *assisa cadit*, or *vertitur in juratam*, the assise falls or is turned into a jury, or *assisa capta est in modum juratæ*, et non in modum assise; the assise is taken like a jury, and not like an assise. *Id.* fol. 192 b, 210 b, 215, 283.

Assises were of two kinds, *grand* and *petite*. See *Grand assise*, *Petite assise*. In Scotch law, the jury in criminal cases is still technically called the *assise*. *Ersk. Inst.* b. 4, tit. 4, § 92. *P. Cyclopædia*. But in England, *assise*, in the sense of a jury of any kind, has become obsolete.

**ASSISE.** A species of writ, or real action, said to have been invented by Glanville, chief justice to Henry II., and having for its object to determine the right of possession of lands, and to recover the possession. 3 *Bl. Com.* 184, 185. According to Lord Coke, assises were used in England, time out of mind. 3 *Co. pref.* v. vi. This remedy, however, was only applicable to two species of injury by ouster, viz., abatement, and a recent, or novel disseisin. 3 *Bl. Com.* 185. The principal assises were those of *novel disseisin*, *mori d'ancestor*, *darrein presentment*, and *utrum*. See *infra*.

These writs, according to Littleton, were called *assises*, because by them the sheriff was ordered to summon a jury or *assise*, which was not expressed in any other original writ. *Litt. sect.* 234. *Co. Litt.* 154 b, 159. Cowell suggests three other reasons: first, because they settled the possession; secondly, because they were originally executed at a certain time and place, formerly appointed; and lastly, because they were tried most commonly by special courts set and appointed for that purpose. Assises have been abolished in England with other real actions.

**ASSISE.** The whole proceedings in court upon a writ of assise. *Co. Litt.* 159 b. The verdict or finding of the jury upon such a writ. 3 *Bl. Com.* 57. These significations serve to explain the expression "to take the assises," (*ad assisas capiendas*), which is so common in the old books and statutes. Blackstone construes the expres-

sion "to take recognitions or assises," used in Magna Charta, (c. 12,) to mean, "to take (or receive the *verdict* of the jurors or recognitors in certain actions then called) recognitions or assises." 3 *Bl. Com.* 57. See *Id.* 59, 352.

**ASSISE, Assize.** A court, the sittings of a court. This is an ancient sense of the word. *Grand Coustum. Norm.* c. 55, cited in *Cowell. Bract.* fol. 179. *Reg. Orig.* 197 b. *Spelman.* *Assise* (now usually written *assize*.) is still used in England to denote the sessions of the judges of the superior courts, holden periodically in each county for the purpose of administering civil and criminal justice. See *Assises*.

**ASSISE.** An ordinance, statute or regulation. *Spelman* gives this meaning of the word the first place among his definitions, observing that *statutes* were in England called *assises* down to the reign of Henry III. The *Assises of Jerusalem*, (q. v.) and the *Assises of Clarendon*, are prominent and early instances of the use of the word in this sense. It is used in the same sense by the earliest English writers. *Glanv.* lib. 9, c. 10. *Bract.* fol. 120 b. *Fleta*, lib. 1, c. 17. *Britt.* c. 30, 31. The rules and regulations respecting the royal forests were called *assises* of the forest. The ordinance of 27 Henry II., obliging every man, according to his estate, to provide a determinate quantity of such arms as were then in use, in order to keep the peace, was called the *assise of arms*. 1 *Bl. Com.* 410, 411. 2 *Id.* 66. So, on the continent of Europe, statutes or royal ordinances were anciently called *assise*. *Spelman*, voc. *Assisa*. Coke's derivation from *assidere*, (to sit together, as a legislative assembly) seems to be recognized by *Spelman* as the origin of this signification of *assise*.

To this head also belong those ancient ordinances or statutes by which the price and sale of bread, ale and other necessities of life were regulated, called *assise venalium*. The most important of these was the *assise* of bread and ale, (*assisa panis et cerevisie*.) the particulars of which are minutely given by *Britton*. *Britt.* c. 30. The *assise* of bread was retained in England until a late period, the power of regulating it in cities and towns being frequently given to the local authorities; but all statutes relating to the *assise* have been recently repealed by statutes 6 & 7 Will. IV. c. 37, and 3 Geo. IV. c. 106. 4 *Steph. Com.* 289, note (g). The custom of regulating the weight and price of bread by public ordinance, together with the term *assise of bread*, was

adopted in some parts of the United States, and continued to be observed in the city of New-York down to a comparatively recent period, but is now disused.

**ASSISE.** Any thing reduced to a certainty in respect to time, number, quantity, quality, weight, measure, &c. *Spelman.*

A fixed time. *Glanv.* lib. 13, c. 32.

A fixed or certain number, as of a jury. See *supra*.

A fixed sum, as a tax, a fine. *Spelman. Lib. Nig. Scacc.* cited *ibid.* *Rent of assise* is a fixed or established rent of the freeholders and ancient copyholders of a manor, which cannot be departed from, or varied. 2 *Bl. Com.* 42.

**ASSISE OF NOVEL DISSEISIN.** [L. Lat. *assisa* (seu *breve*) *novæ disseisinæ*.] In old English practice. A writ or action which lay where tenant in fee simple, fee tail, or for life, was disseised of his lands, tenements or hereditaments.\* *F. N. B.* 177 A. *Roscoe Real Act.* 63. *Bract.* lib. 4, tract. 1. It was so called because the justices in eyre, before whom these assises were taken in their proper counties, rode their circuits from seven years to seven years, (i. e. every seven years,) and no disseisin before the eyre, if it were not complained of in the eyre, could be questioned after the eyre; and therefore, a disseisin committed before the last eyre, was called an *ancient* disseisin, and a disseisin after the last eyre was called a *new* or *novel* disseisin. *Co. Litt.* 153 b. It was much less formal and more summary in its proceedings than any similar remedy previously in use, and is called by *Bracton* *summarius cognitio, absque magna juris solemnitate*, and by the statute of Westminster the second, *festinum remedium*. *Bract.* fol. 164 b. It hence became one of the most frequent and important actions in the ancient law, but in modern times had long been superseded by the action of ejectment, before its express abolition by the statute 3 & 4 Will. IV. c. 27.

**ASSISE OF MORT D'ANCESTOR.** [L. Lat. *assisa*, (seu *breve*) *mortis antecessoris*.] In old English practice. A possessory writ, founded upon the possession of the ancestor, which lay for the heir, where his father, mother, brother, sister, uncle, aunt, nephew or niece was seised in fee of any lands, tenements or rents; and *died*, being so seised on the day of his or her death, and a stranger after such death abated. *F. N. B.* 195, C. *Roscoe Real Act.* 75. 3 *Bl. Com.* 185. *Bract.* lib. 4, tract. 3. Like the *assise* of novel disseisin, this writ had become

obsolete long before its express abolition by the statute 3 & 4 Will. IV. c. 27.

**ASSISE OF DARREIN PRESENTMENT.** [L. Lat. *assisa*, (seu *breve*) *ultima presentationis*.] In old English practice. An assise which lay for a tenant in fee or in tail, where he or his ancestors had presented (or had the *last presentation*, darrein presentment,) to a church, and the clerk had been instituted, and the plaintiff was afterwards hindered in presenting to the same church. It lay also for tenant for life or years, if he had himself presented. *Roscoe Real Act.* 74. *F. N. B.* 31 F. 3 *Bl. Com.* 245. *Bract.* lib. 4, tract. 2. This action is now entirely disused, being superseded by the action of *quare impedit*, (q. v.)

**ASSISE OF UTRUM.** In old English practice. An assise (otherwise called a writ of *juris utrum*,) which lay for a parson or prebendary at common law, and for a vicar, by statute 14 Edw. III. c. 17, to recover lands and tenements, belonging to the church, which were alienated by the predecessor; or of which he was disseised; or which were recovered against him by verdict, confession or default, without praying in aid of the patron and ordinary; or on which any person had intruded since the predecessor's death. 3 *Bl. Com.* 253. *F. N. B.* 49. *Roscoe Real Act.* 74. *Bract.* lib. 4, tract. 5. It derived its name from the emphatic word of the writ by which the jury were required to recognize *whether* (*utrum*) the tenements in question were frankalmoign belonging to the church of the defendant, or the lay fee of the tenant. *Bract.* fol. 286. *Reg. Orig.* 32 b. This writ has long been obsolete, principally by reason of the restraining statute of 13 Eliz. c. 10. 3 *Bl. Com.* 253.

**ASSISE (or BILL) OF FRESH FORCE.** [L. Lat. *assisa* (seu *billa*) *friscæ fortis*.] In old English practice. A writ which lay by the usage and custom of a city or borough, where a man was disseised of his lands and tenements in such city or borough. It was called *fresh force*, because it was to be sued within forty days after the party's title accrued to him. *F. N. B.* 7 C. 3 *Reeves' Hist. Eng. Law*, 28. *Plowd.* 89.

**ASSISE OF NUISANCE.** [L. Lat. *assisa de nocumento*.] In old English practice. An assise or writ which lay to remove a nuisance, and to recover damages. This writ, after stating the complaint of the injured party of some particular fact done to the nuisance of his freehold, (*ad nocumentum liberi tenementi sui*), commanded

the sheriff to summon an assise, that is, a jury, and view the premises, and have them at the next commission of assises, that justice might be done therein. *F. N. B.* 183 I. 3 *Bl. Com.* 221. *Reg. Orig.* 197 b. It has long been superseded by the action on the case; and was expressly abolished in England with other real actions. 3 *Bl. Com.* 222. 3 *Steph. Com.* 503, note (q).

**ASSISES, (or ASSIZES),** otherwise called **COURTS OF ASSISE (ASSIZE) AND NISI PRIUS.** In English practice. Sessions or courts held by two or more commissioners called judges of assise, (or of assise and *nisi prius*,) who are twice in every year sent by the queen's special commission, on *circuits* all round the kingdom, to try by a jury of the respective counties the truth of such matters of fact as are then in dispute in Westminster Hall. 3 *Steph. Com.* 421, 422. These commissioners consist principally of the judges of the superior courts of common law, and they usually make their circuits in the respective vacations after Hilary and Trinity terms. *Id.* 423. *Smith's Action at Law*, 129. They are so called from the commission of *assise* anciently issued to the judges, appointing or assigning them to take assises (*ad assisas capiendas*), that is, to take and receive the verdicts of jurors in certain actions then called assises. 3 *Bl. Com.* 57, 59, 352. See *Assise*. This commission of assise was actually issued down to a recent period, but the abolition of assises and other real actions has now thrown it out of force. 3 *Steph. Com.* 424, note (x).

**ASSISES (or ASSIZES) DE JERUSALEM.** A code of feudal jurisprudence compiled A. D. 1099, after the conquest of Jerusalem, by an assembly of Latin barons or feudal lords, and of the clergy and laity under Godfrey of Bouillon, and intended for the kingdom of Jerusalem, then newly established. *Butler's Co. Litt.* note 77, lib. 3. 4 *Gibbon's Rom. Emp.* 139, (Am. ed.) 1 *Robertson's Charles V.* Appendix, note xxv. Dr. Robertson calls it "the earliest collection of those customs which served as the rules of decision in the courts of justice" of Europe. Mr. Stephen considers it "one of the most curious and important relics of the jurisprudence of the middle ages," and gives several extracts from it in illustration of the subject of pleading. *Steph. Plead.* Appendix, Note (8). *Gibbon* (*ub. sup.*) has given a sketch of its history.

**ASSISORES.** L. Lat. [from *assidere*, to assess.] In old law. Persons who set-

tled assises, or imposed taxes. *Spelman*. Hence probably the modern assessors.

**ASSISORS**, *Assysers*. In Scotch law. Jurors. *Skene de verb. signif. Spelman. Cowell*.

**ASSISUS**, *Assisa*. L. Lat. [from *assidere*, to fix or settle.] Fixed or certain. *Assisus reditus*; a fixed, certain, set or standing rent. *Kennett's Par. Ant.* 314, 355. Called rent of assise. 2 *Bl. Com.* 42. *Terra assisa*; land let or farmed out for a certain assessed rent. *Cowell*.

Situated. *Villa de Jermuth assisa est super arenam maris*; the town of Yarmouth is situated on the sea shore. *Vet. MS. apud Spelman, voc. Assisa*.

**ASSOCIATION**. [L. Lat. *associatio*.] In English practice. A patent sent by the king to the justices appointed to take the assizes, or of oyer and terminer, to have other persons associated to them to take the assise, upon which patent the king sends his writ to the justices, by it commanding them to admit them that are so sent. *Termes de la ley. Reg. Orig.* 201, 203, 205 b, 206. According to Blackstone, writs of association are issued in pursuance of the statutes of 27 Edw. I. c. 4, and 12 Edw. II. c. 3; whereby certain persons (usually the clerk of assize and his subordinate officers,) are directed to associate themselves with the justices and serjeants; and they are required to admit the said persons into their society, in order to take the assizes. 3 *Bl. Com.* 59. 3 *Steph. Com.* 425. Writs of association, however, appear to have been in use before the reign of Edward I. See *Bract. fel.* 111.

**ASSOILE**, *Assoyle*. L. Fr. and Eng. [from Lat. *absolvere*.] To deliver or set free from excommunication. *Staundf. Pl. Cor.* 72.

To free or clear from guilt, or its consequences; to pardon, forgive or absolve. *Richardson's Dict. Stat. 1 Hen. IV. c. 10. Chart. 30 Edw. III. cited in Blount. See Absoile*.

**ASSOILZIE**. In Scotch law. To acquit the defendant in an action; to find a criminal not guilty. *Scotch Dict. Tomlins*.

**ASSOUTH**, *Assous*. L. Fr. Quit, free, discharged. *Litt. sect.* 338.

**ASSULTUS**. Lat. [from *assillire*, to assail.] An assault. *Spelman, voc. Assallire*.

**ASSUME**. To undertake. 1 *Ld. Raym.* 122. 4 *Co. 92*. See *Assumpsit*.

**ASSUMPSIT**. L. Lat. [from *assumere*, to undertake.] In practice and pleading. (He undertook.) The name of a civil action given by law to the party injured by the breach or non-performance of a *parol* contract (that is, a contract not under seal) legally entered into. It lies upon contracts either express, or implied by law, and gives the party *damages* in proportion to the loss he has sustained by the violation of the contract. 4 *Co. 92. Bac. Abr. Assumpsit.* 1 *Chitt. Pl.* 98, 99. 1 *Archb. N. Prius*, 1. *Browne on Actions*, 318—333. It is technically an action on the case, and derives its name from the emphatic word of the clause in the writ and declaration, (when in Latin,) expressive of the defendant's undertaking,—“*super se assumpsit, et adtunc, et ibidem fideliter promisit*”—(undertook, and then and there faithfully promised). 1 *Chitt. Pl.* 111, 112. *Towns. Pl.* 410, 411. See *Indebitatus assumpsit*. This characteristic and once indispensable word is, however, now omitted in the English forms. *Reg. Gen. Trin. T. 1 Will. IV.* 1 *Chitt. Pl.* 98, note (y).

The undertaking or promise itself, upon which an action of assumpsit may be brought. 3 *Bl. Com.* 157. *Termes de la ley. Cowell*.

**ASSURANCE**. [L. Lat. *assurantia*.] In conveyancing. A deed or instrument of conveyance. The legal evidences of the transfer of property are in England called the *common assurances* of the kingdom, whereby every man's estate is *assured* to him, and all controversies, doubts and difficulties are either prevented, or removed. 2 *Bl. Com.* 294. See *Common assurance*. The word has now become obsolete, and occurs only in the formal parts of conveyances.

**ASSURANCE**. Eng. and Fr. [L. Lat. *assecuratio*.] In the law of contracts. A making sure or secure. A term formerly used in English maritime law, in the sense of the modern term *insurance*, and still retained in policies, but otherwise obsolete. *Molloy de Jur. Marit.* 287. Latterly, however, its use has been revived in its application to contracts of indemnity against life contingencies, which are now frequently termed *assurances upon lives*, by way of distinction from indemnity against losses by fire or at sea, &c., to which the term *insurance* is particularly appropriated. *P. Cyclopædia.* 3 *Kent's Com.* 365. The word

*assured* has always been retained in its ancient sense. See *Assure*. *Assurance* is the term used in French law.

**ASSURANTIA.** L. Lat. An assurance. *Bridgm.* 16. *Towns. Pl.* 28, 54.

**ASSURARE.** L. Lat. To assure. *Towns. Pl.* 28, 54.

**ASSURE.** [L. Lat. *assecurare, assurare*.] To make sure, or secure; to confirm or establish; to insure. The party in whose favor a contract or policy of insurance has been executed, is still called the *assured*; the other party being termed the *insurer*. 2 *Steph. Com.* 172.

To convey. "If one be obliged to *assure* twenty acres of land," &c. *Cro. Eliz.* 665. See *Assurance*.

**ASSYS.** L. Fr. Assessed or affeered. *Amerciements soient assys*; the amerciements shall be affeered. *Britt.* c. 26.

**ASSYTHEMENT.** In Scotch law. Indemnification for killing, maiming or laming a person. 1 *Forbes' Inst.* part 2, b. 3, c. 1, tit. 10. *Ersk. Inst.* b. 4, tit. 4, § 105.

**ASTITUTION.** [Lat. *astitutio*, from *ad*, to, and *statuere*, to place; to place or set in order, one by another.] An arraignment was formerly sometimes so called. *Co. Litt.* 262 b. See *Arraignment*.

**ASTRARIUS.** L. Lat. [L. Fr. *astrer*, q. v.] In old English law. The occupant of a hearth or house; a person in actual possession. *Astrarius hæres*; an heir placed by the ancestor in the house (*astrum*) which he was to inherit. *Bract.* fol. 85. An heir in actual possession of the property, as occupying the house he was to inherit, (*eo quod reperitur in atrio sive in astro*.) *Id.* fol. 267 b. *Si ambo fuerint extra, et sic neuter astrarius*; if both were out [of possession], and so neither *astrarius*. *Id. ibid.* See *Id.* fol. 268. *Co. Litt.* 8 b.

**ASTRE.** L. Fr. [L. Lat. *astrum*.] A hearth; a house. *Chescun home communer que ad astre en mesme la ville*; every comonomer who has a hearth in the same town or vill. *Britt.* c. 59.

**ASTRER.** L. Fr. [from *astre*, (q. v.); L. Lat. *astrarius*.] A householder, or occupant of a house or hearth. *Chescun home astrer de mesme la ville*; every householder or resident of the same town or vill. *Britt.* c. 59.

Belonging to, or born in one's house. *Que il fuit son astrer, reseant en son villeyage*; that he was his house slave, residing in his villeinage. *Id.* c. 98.

**ASTRICT.** [from Lat. *astriectus*, bound.] In Scotch law. To bind. Lands are said to be *astriected*, when the possessor is bound to carry the grain of the growth of the land to be ground at a particular mill. *Ersk. Inst.* b. 2, tit. 9, § 18.

**ASTRIHILTHET.** Sax. In Saxon law. A kind of penalty or compensation imposed upon offenders having the king's peace. *LL. Edw. Conf.* c. 30. *Spelman*.

**ASTRUM.** L. Lat. [from Fr. *astre*, q. v.] A house, or place of habitation. *Bract.* fol. 267 b. *Cowell*.

**AT, Ad.** L. Fr. Hath. *Kelham*.

**AT, Et.** L. Fr. And. *Id.*

**AT AND FROM.** Words frequently used in marine policies of insurance, the meaning of which depends upon the actual situation of the vessel at the time the insurance is effected. See 3 *Kent's Com.* 307, 308, and notes. Story, J., 1 *Mason's R.* 127, 140. 1 *Duer on Ins.* 167, § 14.

**AT LARGE.** [L. Fr. *a large*; L. Lat. *ad largum*.] In old practice. Not limited to any particular matter, point, or question. A special verdict was called a *verdict at large*, because it found the matter at large, [that is, it found all the facts proved without drawing any conclusions, instead of finding summarily for the one or the other party,] and left it to the judgment of the court. *Litt.* 366, 367. *Co. Litt.* 228 a.

**AT LAW.** [L. Fr. *a ley*; L. Lat. *ad legem*.] According to law; by, for, or in law. This common expression has been applied from a very early period exclusively to the English common law, and seems peculiar to it. "At common law," (answering to the Fr. *al comen ley*, and Lat. *ad communem legem*), is a phrase of constant occurrence in the books; *in* being the corresponding preposition applied to *equity*. "At law and *in* equity" is a phrase in daily use.

*At law* forms a part of the well-known professional titles, *serjeant at law*, and *bar-rister at law*, in England, and *attorney at law*, and *counsellor at law*, in the United States. These have not undergone any change, but the old and long obsolete Eng-

lish title, *apprentice at law* had also the forms of "apprentice in law," and "apprentice of law." See *Apprenticius ad legem*. An *attorney at law* is still occasionally called an "attorney in law," by way of clearer distinction from *attorney in fact*. *Story on Agency*, § 24. The prepositions *at* and *in* both seem, in these connexions, to have the sense of *for*.

AT SEA. Out of the limits of any port or harbor on the sea-coast. 1 *Story's R.* 251.

ATAVIA. Lat. In the civil law. A great grandfather's grandmother. *Inst.* 3. 6. 3.

ATAVUNCULUS. Lat. A great grandfather's grandmother's brother; (*atavia frater*); called by Bracton *atavunculus magnus*. *Bract.* fol. 68 b.

ATAVUS. Lat. In the civil law. A great grandfather's grandfather. *Inst.* 3. 6. 3. *Bract.* fol. 67. *Plowd.* 449.

ATHA, *Athe*. L. Lat. [from Sax. *ath*, an oath.] In Saxon law. An oath; the power or privilege of exacting and administering an oath. *Spelman*.

ATIA, *Atya*, *Hatia*, *Hatya*. L. Lat. [from the English *hate*, according to *Spelman*.] Malice, hate or hatred. *Reg. Orig.* 183 b. *Bract.* fol. 123. See *De odio et atia*.

ATMATERTERA. Lat. A great grandfather's grandmother's sister, (*atavia soror*); called by Bracton *atmatertera magna*. *Bract.* fol. 68 b.

ATNEPOS. Lat. In the civil law. A grandson's or granddaughter's great grandson. *Inst.* 3. 6. 3.

ATNEPTIS. Lat. In the civil law. A grandson's or granddaughter's great granddaughter. *Inst.* 3. 6. 3.

ATPATRUUS. Lat. A great grandfather's grandfather's brother, (*atavi frater*); called by Bracton *atpatruus magnus*. *Bract.* fol. 68 b.

ATTACH. [L. Lat. *attachiare*; from Fr. *attacher*, to tie or bind to.] In practice. To take or apprehend by commandment of a writ or precept, commonly called an attachment. *Cowell. Termes de la ley. Spelman*. Applied both to persons and property. See *Attachment*.

Various distinctions are made in the old books, between the significations of the words *attach* and *arrest*, which have ceased however to be of any practical value.

*Arrest* (q. v.) is now entirely confined to the taking of the person.

ATTACHIAMENTUM. L. Lat. An attachment. *Bract.* fol. 439 b. 440. *Reg. Orig.* 18, et *pussim. Spelman. Solennitas attachiametorum*; the formality of attachments; the old practice of issuing one attachment after another, in a regular order or series. *Bract.* fol. 437. 1 *Reeves' Hist. Eng. Law*, 480—487.

ATTÀCHIARE. L. Lat. To attach. *Præcipimus tibi quod* attachies, &c.; we command you that you attach, &c. *Reg. Orig.* 64 b. *Tunc attachiari facias*; then you cause to be attached. *Bract.* fol. 149. *Attachiabitur*; he shall be attached. *Glanv.* lib. 3, c. 6.

ATTACHMENT. [L. Lat. *attachiametum*.] In practice. A taking or seizure of a person or property, by virtue of a legal process. See *infra*.

A writ or process for the taking or seizure of persons or property. See *Attach*.

An *attachment against the person* is a writ or process in the nature of a criminal proceeding, issuing out of a court of record, against a person who has committed some *contempt* of court, either by openly insulting the court itself, or by insulting, resisting, disregarding or abusing its process, or by doing or omitting to do any thing which shows his disregard of the authority of the court. Attachments of this kind may be issued against attornies, solicitors, sheriffs, gaolers and other officers of court, parties to suits, jurors, witnesses, inferior judges and officers, for misconduct or neglect of duty; and against all persons who may be guilty of a contempt of court, either direct or consequential. 4 *Bl. Com.* 283, 284. 4 *Steph. Com.* 348. 1 *Tidd's Pr.* 479, 480. See *Contempt*. The object and effect of the attachment, in these cases, is to bring the party personally into court, where, unless he clears himself of the contempt, he is punished by fine or imprisonment, or both, at the discretion of the court. 4 *Bl. Com.* 287. See *U. S. Digest*, Attachment, V.

An *attachment against property* is of several kinds, as

1. The old process of *attachment* in English practice, by which a defendant's goods were seized as a distress or means of compelling his appearance in an action. 3 *Bl. Com.* 280. *Roscoe Real Act.* 151.

2. A species of *mesne process* peculiar to the practice of some of the Eastern States, by which the goods and chattels, or lands of a defendant are seized at the commence-

ment of a suit, and held as security to satisfy such judgment as the plaintiff may recover. *Rev. Stat. Mass.* 1836, part iii. tit. 2, c. 90, §§ 23, 24. *Story on Bailm.* § 124. *Story, J., 2 Story's R.* 181, 141. This was originally the same with the English process, (*supra.*) *Parsons, C. J., 7 Mass. R.* 123, 128. See *U. S. Digest*, Attachment, I. *Minot's Digest*, Attachment.

3. The process of attachment against the property of absconding, concealed, absent or non-resident debtors; otherwise called foreign attachment, and sometimes domestic attachment, and trustee process. See *Foreign attachment*, *Domestic attachment*, *Trustee process*.

**ATTACHMENT OF PRIVILEGE.** In English practice. An attachment founded upon, or having reference to privilege. Attornies and other officers of court were formerly privileged to sue in the courts to which they belonged, and the process by which actions in these cases were commenced was termed an *attachment of privilege*. 1 *Tidd's Pr.* 37, 38. *Steph. Pl.* 58. (Am. ed. 1824.)

An attachment of privilege was also anciently so called, when it issued to apprehend a person in a *place privileged*. *Termes de la ley*.

**ATTACHMENTS, Court of.** In forest law. The lowest of the forest courts, held before the verderors of the forest once in every forty days, to receive from the foresters or keepers their attachments or presentments against vert and venison, and to enrol or certify them to the court of *justice-seat* or *swein mote*. *Cart. de Forest.* c. 8. 3 *Bl. Com.* 71, 72. *Termes de la ley*. 3 *Steph. Com.* 439. Like the forest courts generally, it is now disused. *Id. ibid.*

**ATTAINDER.** [L. Lat. *attinctura*; from Fr. *atteindre*, to reach to, or overtake, or *teindre*, to taint, or stain.] In English criminal law. That extinction of civil rights and capacities which takes place whenever a person who has committed treason or felony, receives sentence of death for his crime. 1 *Steph. Com.* 408. The person so sentenced is called *attaint*, or *attainted*, (*attinctus*, stained or blackened.) He is no longer of any credit or reputation; he cannot be a witness in any court, neither is he capable of performing the functions of a man, for by an anticipation of his punishment he is already dead in law. 4 *Bl. Com.* 380. 4 *Steph. Com.* 446. The consequences of attainder are forfeiture and cor-

ruption of blood. 4 *Bl. Com.* 381. 3 *Id.* 251. See *Forfeiture*, *Corruption of blood*.

Acts of attainder were passed by several of the United States during and shortly after the revolution, but the doctrine of attainder is now scarcely known in American law, and the passage of bills of attainder by the states is expressly prohibited by the constitution of the United States. *Const. U. S.* Art I. Sect. IX. *Story on the Const.* (Abr.) §§ 677, 678. *U. S. Digest*, Attainder.

**ATTAINT.** [L. Fr. *atteynste*; L. Lat. *attincta*.] In old English practice. A writ which lay to inquire whether a jury of twelve men had given a false verdict, in order that the judgment might be reversed. 3 *Bl. Com.* 402. *Bract.* fol. 288 b.—292. *Britt.* c. 98. *Reg. Orig.* 203 b.—205, *et passim.* *F. N. B.* 105 G. This inquiry was made by a grand assise or jury of twenty-four persons, and if they found the verdict a false one, the judgment was that the jurors should become infamous, should forfeit their goods and the profits of their lands, should themselves be imprisoned, and their wives and children thrust out of doors, should have their houses razed, their trees extirpated, and their meadows ploughed up, and that the plaintiff should be restored to all that he lost by reason of the unjust verdict. 3 *Bl. Com.* 404. *Co. Litt.* 294 b. *Bract.* fol. 292 b. This punishment was afterwards modified by statute, but the writ of attain remained in force, (though quite fallen out of use,) till abolished by the statute 6 Geo. IV. c. 50, s. 60. 3 *Steph. Com.* 627, note (z).

**ATTAINT.** L. Fr. [L. Lat. *attinctus*.] In old English law. Attainted; convicted or found guilty of some offence. *Attaint de disseisin*; convicted of disseisin. *Stat. Westm.* 1, c. 24.

Defeated in an action. *Estre attaint et vaincu en aucun cas*; to be attaint and overcome, or cast in any case. *Cowell.* *Blount.* A distinction however was generally made by the old writers between *attainder* and *conviction*. See *Cowell.* *Blount.* 4 *Bl. Com.* 380.

**ATTEINDRE.** L. Fr. To attaint, to convict; attainder, conviction. *Kelham.*

**ATTENDANT.** [L. Lat. *attendens*.] In old English law. Owing a duty or service to another; waiting or depending upon another. Where a widow was in certain cases endowed by a guardian, she was

said to be *attendant* to the guardian, and to the heir at his full age. *Termes de la ley. Cowell.*

**ATTENDANT TERMS.** In English law. Terms, (usually mortgages,) for a long period of years, as one thousand or two thousand years, which are created or kept outstanding for the purpose of *attending*, or waiting upon and protecting the inheritance.\* 1 *Steph. Com.* 351.—Thus, where land held in fee is mortgaged for a long term of years, (as a thousand years,) and upon the estate being sold, the mortgage is paid off out of the purchase money, it is usual for the purchaser, (instead of taking a surrender of the term to himself, and so merging it in the inheritance,) to keep it on foot, and have it assigned to a trustee of his own nomination, in trust for himself, (the purchaser,) “and to attend and protect the inheritance.” The reason of this practice is, that the beneficial or equitable interest in a term assigned upon such a trust, follows (though a mere chattel,) all the limitations of the inheritance,—belongs to the heir or devisee of the new owner, and not to his executor or administrator, and is subject to the other incidents of a fee simple; so that, for all purposes of convenience, the case is the same as if it had merged into the inheritance; while on the other hand, it affords him a security which he could not have had if a merger had actually taken place. For if it should afterwards turn out that prior to the purchase, but posterior to the creation of the term, there had been an intermediate alienation or incumbrance of the fee in favor of another person, to which the then trustee of the outstanding term had been no party, and of which the subsequent purchaser had had no notice when he took his conveyance, and paid his purchase money, he will be protected against it through the medium of the *term*, which being the elder title, will also take the priority in point of legal effect. 1 *Steph. Com.* 351, 352. Terms may also become attendant by the mere construction of a court of equity. *Id.* 352. See 2 *Crabb's Real Prop.* 529, § 1738, et seq. *Burton's Real Prop.* 276, pl. 880. *Id.* 439, pl. 1428. 4 *Kent's Com.* 86—93.

In the United States, the doctrine of *attendant terms* is of little practical value, terms for years being treated altogether as personal estate; which go in a course of administration, as chattel interests, without any suggestion of their being of the character of attendant terms. 4 *Kent's Com.* 93, 94. See 1 *Hilliard's Real Prop.* 345. And in England these terms have been, in

a great degree, abolished by the late statute 8 & 9 Vict. c. 112.

**ATTENTARE.** Lat. To attempt. *Vobis prohibemus ne quicquam in præmissis attentare præsumatis*; we prohibit you that you do not presume to attempt any thing in the premises. *Reg. Orig.* 36 b. *Nec quicquam in hac parte attentetis, seu attentari faciatis.* *Id.* 37.

**ATTENTAT.** Lat. [from *attentare*, q. v.] He attempts. In the civil and canon law. Any thing wrongfully innovated or *attempted* in a suit by an inferior judge, (or judge *a quo*,) pending an appeal. 1 *Adams' R.* 22, note. *Ayliffe Parerg.* 100. *Shelford Marr. & Div.* 562.

**ATTERMINARE.** L. Lat. [from *ad*, to, and *terminus*, a term.] In old English practice. To adjourn; to put off to another term, (*ad terminum ponere*.) See *infra*. *Coram justitiariis nostris apud Westmonasterium atterminatas*; adjourned before our justices at Westminster. *Bract.* fol. 110. *Atterminata*,—*posita ad talem terminum*; adjourned,—put to such a term. *Id.* fol. 426. *Atterminent querentes*; the plaintiffs may adjourn. *Stat. Westm.* 2, c. 24. To determine. *Stat. Westm.* 2, c. 30. See *Atterminatio*. But this was not the proper sense of the word. See *Bract.* fol. 355 b.

**ATTERMINATIO.** L. Lat. Determination. *Reg. Orig.* 30.

**ATTERMINER.** L. Fr. To put off, or adjourn; to respite; to delay. *Kelham*. To grant further time for the payment of a debt.

**ATTERMINING.** In old English law. A putting off; the granting of a time or term, as for the payment of a debt. *Cowell*.

**ATTEST.** [Lat. *attestari*, from *ad*, to, and *testari*, to witness.] In practice and conveyancing. To witness or testify. Where it is provided that an instrument shall be *attested*, the term *attest* implies that a witness shall be present to testify that the party who is to execute the deed has done the act required. 9 *M. & W.* 404.

**ATTESTATION.** [from Lat. *attestari*, to witness.] The testifying to, or witnessing the signature or execution of a deed or other instrument, by the witnesses; including the subscription of their names. Blackstone considers it the same as “execution in the presence of witnesses.” 2 *Bl. Com.*



307. But *execution* and *attestation* are clearly distinct formalities; the former being the act of the *party*, the latter of the *witnesses* only.

**ATTEYNTE.** L. Fr. *Attaint*; an attain. *Britt. c. 98.*

**ATTILE,** *Attilium.* L. Lat. The rigging of a ship. *Cowell.*

**ATTINCTA.** L. Lat. [from *attingere*, to touch or reach, or from *tingere*, to stain.] An attain. *Reg. Orig. 121 b, 122, 203 b, 204. Spelman.*

**ATTINGERE.** Lat. To touch or reach to; to amount to. *Qua summam quadraginta solidorum attingunt, vel eam excedunt*; which amount to, or exceed the sum of forty shillings. *Reg. Orig. 145. Attingunt se*; they amount to. *Yelv. 80. Quæ in toto se attingunt*; which in the whole amount to. See *In toto se attingunt. Attingentia*; amounting to. *Hob. 133.*

To touch; to be allied to, or connected with. *Nullo jure cognationis patrem sui patris attigit*; by no law or principle of relationship is he allied to his grandfather. *Inst. 3. 1. 8. Qui aliqua affinitate non attingunt*; who are not related by any affinity. *Bract. fol. 72, 150.*

**ATTORN,** *Attorn.* [L. Lat. *attornare*, *attornare*; from Fr. *attorner*, to turn over, or transfer; or *tourner*, to turn or exchange, to give one thing in place of another.] In feudal law. To transfer or turn over to another. Where a lord aliened his seignior, he might, with the consent of the tenant, and in some cases without, (*velit nolit*) *attorn* or transfer the homage and service of the latter to the alienee or new lord. *Bract. fol. 81 b, 82.* In such case he was sometimes said to *attorn* or transfer the tenant himself (*attornare tenentem*), and the tenant was said to be attorned, (*attornari, attornabitur.*) *Id. ibid. Id. fol. 169.*

To consent to a transfer; to transfer one's self, or one's services.—Where a tenant consented to the grant or transfer of the seignior, he was said to *attorn* (properly, to *attorn himself*) to the grantee; that is, to transfer his services to him, and agree to become his tenant. 2 *Bl. Com. 288.* "Sir, I *attorn* to you by force of the said grant," was the form of words by which this consent was usually expressed. *Litt. sect. 551, 553, 554.* This is the origin of the modern practice of *attornment*, (q. v.) See *infra.*

In modern law. To consent to the transfer of a rent or reversion. A tenant is said

to *attorn*, when he agrees to become the tenant of the person to whom the reversion has been granted. See *Attornment.*

In old practice. To put in one's place; to substitute; to appoint an attorney. See *Attornare.*

**ATTORNAMENTUM,** *Attornamentum.* L. Lat. [from *attornare*, q. v.] Attornment. *Co. Litt. 309 a.* See *Attornment.*

**ATTORNARE,** *Attornare.* L. Lat. [L. Fr. *attorner*; according to Spelman, from *tourner*, to turn, to exchange; to give one thing in place of another.] In feudal law. To attorn; to transfer or turn over. *Attornare servitium tenentis*; to attorn the service of a tenant. *Bract. fol. 81 b, 82. Et attornat servitium firmarii*; and attorns the service of the fermor or lessee. *Id. fol. 178. Possum attornare tenentem meum*; I may attorn my tenant. *Id. fol. 169. Cum ipse de voluntate sua se attornaverit ei, et ei fecerit servitium*; where he, of his own will, attorned himself to him, and did service to him. *Id. fol. 41. In quibus casibus attornabitur, velit nolit*; in which cases he shall be attorned, whether he will or not. *Id. fol. 82. Attornare rem*; to attorn or turn over a thing, as money and goods; i. e. to assign or appropriate them to some particular use and service. *Kenn. Par. Ant. 283. Cowell.*

In old practice. To attorn: to put in one's place; to appoint a substitute or attorney. *Pateat universis per presentes, quod ego, A. de B., attornavi, et in loco meo constitui C. de D.*; Know all men by the presents, that I, A. of B., have attorned, and put in my place C. of D. *Reg. Orig. 172. Vobis præcipimus quod attornatum quem W. per literas suas patentes loco suo attornare voluerit—recipiatis*; we command you that you receive the attorney whom W. by his letters patent may choose to attorn in his place. *Id. 172 b.* The words *attornare, attornavi, attornavit, attornaverat, &c.*, are of constant occurrence in the forms of letters of attorney, and writs *de attornato recipiendo*, in the Register. *Reg. Orig. 26—29.*

**ATTORNATIO.** L. Lat. An attornment. *Bract. fol. 79 b.*

**ATTORNATUS,** *Attornatus.* L. Lat. [from *attornare*, q. v.] One who is attorned, (L. Fr. *attourné*), or put in the place of another, (*ad turnum alterius*); a substitute; an attorney. *Spelman.* *Attornatus vel procurator*; an attorney or procurator, (proctor.) *Reg. Orig. 25 b, 281.* These

were nearly or quite synonymous terms. *Provisum est quod quilibet liber homo—libere possit facere attornatum suum, &c.*; it is provided that every freeman—may freely make his attorney, &c. *Stat. Merton*, (20 Hen. III.) c. 10. *Reg. Orig.* 26 b. See *Attorney, Attorney at law*.

**ATTORNE.** L. Fr. An attorney. *Britt.* c. 126.

**ATTORNER.** L. F. To attorn or transfer. *Que le seignieur pousse attorner le homage et le service son tenaunt*: that the lord may attorn the homage and service of his tenant. *Britt.* c. 68. *Si aucun tenaunt de son gree ne se voille attorner a tener de autre seignieur*; if any tenant of his own will, will not attorn himself to hold of another lord. *Id., ibid.* See *Attorn*.

**ATTORNEY, Attorney, Attourney.** [L. Lat. *attornatus, atturnatus*; L. Fr. *attorné, atturné, attourné*; from *tourner*, or *attourner*, to turn, put in the place of, substitute; or *tourner*, a turn or change.] One who is substituted for another, (*vicarius*), or put in his place or turn, (*ad turnum*, i. e. *ad vicem*), to act for him, or manage his concerns.\* One who manages the affairs of another by the direction or appointment of his principal, (*ad mandatum domini*.) *Spelman*. One who is appointed by another to do something in his place or stead. *Termes de la ley. Com. Dig. Attorney, A.* One who is employed by another to do any act for his benefit, or on his account.\* *Story on Agency*, § 3. Attornies are either public or private; or as they are more commonly distinguished, *attornies at law*, and *attornies in fact*. See *infra*.

**ATTORNEY AT LAW.** [L. Lat. *attornatus* or *atturnatus, procurator, responsalis*, qq. v.] In practice. One who is put in the place, stead, or turn of another, to manage his matters of law. 3 *Bl. Com.* 25. A public attorney (answering to the *proctor* of the ecclesiastical and admiralty courts, the *solicitor* of courts of equity, and, in many respects, to the *procurator ad litem* of the civil law) whose office is to appear for the parties to actions and other judicial proceedings, and to prosecute and defend them in their behalf, and whose authority is derived either from a formal warrant of attorney, or, which is the usual practice, a mere oral retainer. Attornies are regarded as *officers* of the respective courts in which they are admitted to practice, and their business, as distinguished from that of *counsellors*, is to carry on the practical and more mechanical parts of suits, or such

proceedings as do not require to be conducted in open court. See *Counsellor*. This distinction has been adopted from the English practice, and where it is observed, *attorney* is regarded as a name or title of *degree* as well as of office, to which persons are usually admitted before taking that of counsellor. In many of the United States however no such distinction is observed, although both titles are retained in common use. 1 *Tidd's Pr.* 60—90. *U. S. Digest, Attorney and counsel*.

The term *attorney (atturnatus)* does not appear in English law until the time of Bracton, although it occurs in the *Customier* of Normandy, (c. 65), a compilation of earlier date; whence Cowell reasonably infers it to be of Norman origin. Glanville uses in its place sometimes the word *nuntius*, sometimes *procurator*, but most commonly *responsalis*, (one who answers for another.) *Glanv. lib.* 11. See *Responsalis*. Mr. Stephen supposes the office of a *responsalis* to have been in substance the same with that of an attorney. *Steph. Pl. Appendix*, Note (5). Bracton however expressly says that there was a *great difference* between them, (*est differentia magna inter responsalem et attornatum*), and enumerates various acts which an attorney could do, and which a *responsalis* could not. *Bract. fol.* 212 b. And see *Id. fol.* 349 b. The person by whom an attorney was appointed and for whom he acted, was called his *master* or lord, (Lat. *dominus*, Fr. *seignieur*.) *Attornatus fere in omnibus personam domini representat*; an attorney represents the person of his master in almost all respects. *Id. fol.* 342. *General attorne puit tant que son seignieur puit*; a general attorney may do as much as his lord may. *Britt. c.* 46. See *Dominus, Apprenticius ad legem*.

**ATTORNEY AT LARGE.** In old practice. An attorney who practised in all the courts.\* *Cowell*.

**ATTORNEY IN FACT.** [L. Lat. *procurator, vicarius*.] A private attorney authorized by another to act in his place and stead, either for some particular purpose, as to do a particular act, (*in factum*), or for the transaction of business in general, not of a legal character. This authority is conferred by an instrument in writing, called a *letter of attorney*, or more commonly a *power of attorney*, (qq. v.) *Bac. Abr. Attorney. Story on Agency*, § 25. The word in its most general sense includes all agents employed in any business, or to do any act or acts *in pais* for another. *Id. ibid.*

**ATTORNEY GENERAL.** A law officer of state in England and the United States; the attorney of the King or Queen, (*attornatus regis*, or *reginae*;) the attorney of the government or state.

In England the attorney general is appointed by letters patent, and selected from the queen's counsel. He is the only legal representative of the crown in the courts, and his duties are to exhibit informations, to prosecute for the crown in criminal matters, to conduct proceedings in the exchequer in revenue causes, and generally to appear and act in all legal proceedings, and in all courts where the interests of the crown are in question. *Wharton's Lex. P. Cyclopædia*. 3 *Bl. Com.* 27. 4 *Burr.* 2570. *Tomlins*. The title of attorney general is first mentioned in England in the eleventh year of Edward IV. 4 *Reeves' Hist. Eng. Law*, 122.

The attorney general of the United States is appointed by the President, and his office is, (besides special and incidental duties,) to prosecute and conduct all suits in the Supreme Court in which the United States are concerned, and to give his advice and opinion upon questions of law, when required by the President, or the heads of the departments. *Act of Congress*, September 24, 1789, § 35. 1 *Kent's Com.* 308. Each of the states has also its attorney general, whose duties are defined by its own laws. See *U. S. Digest*, Attorney and Counsel, IX.

**ATTORNEY GENERAL.** [L. Fr. *attorne general*; L. Lat. *attornatus generalis*.] In old practice. A general attorney; one who was authorized to appear in all suits and causes, and in all courts; or in all suits at a particular circuit, or for a specified period of time.\* *Reg. Orig.* 20—22. These were made either by the king's letters patent, or by appointment of the people (*par constitutions de gens*) before the justices in eyre. *Britt. c.* 126. See *Id. c.* 46. An attorney special, on the other hand, was one who was employed in one or more causes particularly specified, or one who belonged to a particular court. *Cowell*.

**ATTORNMENT.** [L. Lat. *attornamentum*, *attornatio*; L. Fr. *attournance*.] In feudal and old English law. A turning over, or transfer by a lord, of the services of his tenant to the grantee of his seignior. A transfer by the tenant of his services to the grantee, or new lord; a tenant's consent to a transfer of lands by his lord; or his acknowledgment or acceptance of the grantee

as his lord, in place of the former lord.\* See *Attorn*, *Attornare*.

In English law. An agreement of a tenant to the grant of a seignior, [i. e. to become tenant to a new lord of the seignior,] or of a rent; or the agreement of a donee in tail, or tenant for life, or years, to a grant of a reversion or of a remainder, made to another, [i. e. to become connected with him in the relation of landlord and tenant of the tenement.] *Shep. Touch.* (by Preston), 253. *Co. Litt.* 309. Attornment might be by words alone, as by saying to the grantee, "I agree to the grant made to you," or "I am well content with the grant made to you;" but the most common attornment was to say, "Sir, I attorn to you by force of the said grant," or, "I become your tenant;" or it might be in writing to the same effect; or it might be by delivering to the grantee a penny, or a half penny, or a farthing, by way of attornment. *Litt. sect.* 551, 553, 554. *Co. Litt.* 309 b. Attornment continued to be a necessary ceremony in the transfer of estates, until dispensed with by the statutes of 4 & 5 Anne, c. 16, and 11 Geo. II. c. 19. 2 *Bl. Com.* 290. 1 *Steph. Com.* 434—436, 475.

In the United States, attornment may be considered as abolished. 4 *Kent's Com.* 490, 491. The term however continues to be applied to the acts of tenants, in somewhat of its ancient signification. See *Attorn*.

**ATTOURNANCE.** L. Fr. Attornment. *Kelham*.

**ATTURNATUS.** L. Lat. An attorney. *Spelman*. See *Attornatus*.

**ATTURNE.** L. Fr. An attorney. *Britt. c.* 126. See *Attorne*.

**ATTURNER.** L. Fr. To attorn. *Litt. sect.* 553, 554.

**ATYA.** L. Lat. Hatred. *Bract. fol.* 123. See *Atia*.

**AU.** L. Fr. At. *Au plus*; at most. *L. Fr. Dict.* *Au temps*; at the time. *Id.* To. *Au quel*; to whom, or which. *Id.* For. *Au aumons*; for alms. *Id.* Until. *Au ceo temps*; until this time. *Id.*

**AUBAINE, Aubaigne.** Fr. See *Droit d'aubaine*.

**AU BESOIN.** Fr. [In case of need; "au besoin chez Messrs.—à—;" in case of need apply to, &c.] In French law. Words

used in the direction of bills of exchange, pointing out certain persons who, in case of a refusal or failure of the drawee, are to be applied to, that they may honor and pay the bill, in the nature of an acceptance *supra protest*. *Story on Bills*, § 65. The same words are also used in endorsements. *Id.* § 216.

**AUCEPS SYLLABARUM.** Lat. A catcher of syllables. One who takes (or offers to take) advantage of trifling verbal inaccuracies, watching or lying at catch for the mistakes of others, like a fowler or bird catcher, (*auceps*); a catching, captious, tricky pleader, or practitioner. *Cic. de Orat.* i. 55.

**AUCTION.** [from Lat. *auctio*, from *augere*, to increase.] A public sale, where the parties desiring to purchase bid upon each other, that is, successively offer an increasing price; the sale being to the highest bidder.\* From the circumstance of the bids being repeated aloud by the salesman or auctioneer, it has been sometimes termed a sale by outcry. *Babington on Auctions*, 3. Both the term *auCTION*, and the mode of sale itself are of Roman origin. *Id.* 1—3. See *Subhastatio*.

**AUCTIONARIUS, Auzionarius.** L. Lat. A seller, regrater or retailer. *Auctionarii et auxionatrices panis, cervisiae, et aliarum rerum*; retailers (male and female) of bread, ale and other things. *Cowell. Placit. Parl.* 18 *Edw. I.* cited *ibid.*

A broker; one who bought as well as sold. *Spelman*, voc. *Auctionarii*. *Auctionarius qui emit*; an auctioneer who buys. *Gloss. Isodori*, cited *ibid.*

A broker, or person who loaned money. *Gregor. Mag. Registr.* lib. 1, epist. 42, cited *ibid.*

An auctioneer, in the modern sense. *Spelman, ubi sup.* See *Auctioneer*.

**AUCTIONEER.** [from L. Lat. *auctionarius*, (q. v.); Lat. *propola*.] One who conducts an auction or public sale.\* *Spelman*, voc. *Auctionarii*. A person who is authorized to sell goods or merchandise at public auction or sale, for a recompense, or (as it is commonly called,) a commission. *Story on Agency*, § 27. An auctioneer differs from a broker in being authorized only to sell, and that at public auction. *Id. ibid.* 2 *H. Bl.* 555. Formerly, however, auctioneers had power to buy as well as sell, and were indeed called brokers. *Auctionarii, quos Angli Brokers dicimus*; auctioneers, whom we English call brokers. *Spel-*

*man*, voc. *Auctionarii*. 2 *H. Bl. ub. sup.* See *Auctionarius*.

**AUCTOR, Auctour.** L. Fr. [from Lat. *actor*, q. v.] A plaintiff. *Kelham*.

**AUCUN, Aucon, Augune, Akune.** L. Fr. Some; some one. L. Fr. *Dict. Kelham*. *Aucune foits*; sometimes. L. Fr. *Dict. Aucunement*; somewhat. *Id.*

**AUCUPIUM.** Lat. [from *auceps*, a fowler.] A catching at; the taking advantage of, or laying stress upon trivial mistakes, or oversights. *Aucupia verborum sunt iudice indigna*; catchings at words are unworthy of a judge. *Hob.* 343. See *Auceps syllabarum*.

**AUDIENCE COURT.** [L. Lat. *curia audientiae Cantuariensis*.] In English ecclesiastical law. A court belonging to the Archbishop of Canterbury, of equal authority with the Arches court, though inferior both in dignity and antiquity. *Termes de la ley. Wharton's Lex.*

**AUDITA QUERELA.** L. Lat. (Having heard the complaint.) In practice. A writ which lies for a defendant against whom judgment is recovered, and who is therefore in danger of execution, or perhaps in execution, whereby he may be relieved, upon showing good matter of discharge, which has happened since the judgment; as if the plaintiff has given him a general release, or if the defendant has paid the debt to the plaintiff, without procuring satisfaction to be entered on the record. In these and the like cases, an *audita querela* lies in the nature of a bill in equity. It is a writ, directed to the court in which the judgment is recovered, stating that the complaint of the defendant has been heard, (*audita querela defendantis*), and after setting out the matter of the complaint, it enjoins the court to call the parties before them, and having heard their allegations and proofs, to cause justice to be done between them. 3 *Bl. Com.* 405. *Reg. Orig.* 114, 149. *Reg. Jud.* Appendix, 14, 15. *F. N. B.* 102, *H. Bac. Abr.* *Audita querela. Com. Dig.* h. t. *U. S. Digest*, h. t.

This writ is now rarely used, the object of it being, in most cases, attainable by motion to the court founded on affidavit of the facts. 3 *Bl. Com.* 406. 3 *Steph. Com.* 641, note (m). *Eyre, C. J.*, 1 *Bos. & Pul.* 428.

**AUDITOR.** Lat. and Eng. [from *audire*, to hear.] An officer, or person whose busi-

ness is to examine and verify the accounts of persons entrusted with money. A person appointed to examine a particular account, and state or certify the result; in doing which, he is said to *audit* the account. Literally, a *hearer*, (from Lat. *audire*, to hear);\* so called, probably, from the ancient practice of delivering accounts *viva voce*. *Brande*.

In English law. An officer or agent of the crown, or of a private individual, or corporation, who examines periodically the accounts of under officers, tenants, stewards or bailiffs, and reports the state of their accounts to his principal. *P. Cyclopædia*. The auditors of the exchequer were officers appointed to take the accounts of receivers of the public revenues. Their duties are now performed by a board of commissioners. *Brande*.

In American law. An officer of the treasury of the United States, whose duty is to examine the accounts of officers who have received and disbursed public moneys by lawful authority. *Acts of Congress*, March 3, 1817, sess. 2, c. 45; February 24, 1819, sess. 2, c. 43.

In practice. Persons appointed by the court in actions of account, to take the accounts of the parties. 3 *Bl. Com.* 163. 1 *Story's Eq. Jur.* §§ 447, 448. See *Account*.

AUDITORES COMPOTI. L. Lat. Auditors of account. *Stat. Westm.* 2. c. 11.

AUDITUS. L. Lat. [from *audire*, to hear.] In old pleading and practice. Hearing. In auditu *quamplurimorum*; in the hearing of very many. *T. Raym.* 196.

Oyer, (which was anciently an actual hearing.) *Et petunt auditum scripti prædicti, et eis legitur in hæc verba*; and they pray oyer of the said writing, and it is read to them in these words. *Hob.* 19 a. 2 *Id. Raym.* 1540. *Si querens petat auditum*; if the plaintiff pray oyer. *Stat. Westm.* 2, c. 39. See *Oyer*.

AUGMENTATION. In old English law. The name of a court erected in the twenty-seventh year of King Henry VIII., for the purpose of protecting the king's interests, in relation to the profits of suppressed religious houses and their lands, given him by act of parliament of the same year. So called from the *augmentation* of the revenues of the crown, derived from the suppression of such houses.\* *Termes de la ley*. The court was dissolved in the reign of Queen Mary, but the office of

augmentation remained long after. *Id. Cowell*.

AUGUSTA. Lat. In the Roman law. The title of the wife of the emperor, (*Augustus*;) corresponding with queen consort in English law. 1 *Bl. Com.* 218. It was first given to Livia, the wife of Augustus, but finally became a common title of the mother, wife, sister, or daughter of an emperor. *Tacit. Annal.* i. 8. *P. Cyclopædia*. *Augusta legibus soluta non est*; the empress or queen is not privileged or exempted from subjection to the laws. 1 *Bl. Com.* 219. *Dig.* 1. 3. 31.

AULA, *Haula*, *Halla*. L. Lat. In old English law. A hall, or court; the court of a baron, or manor; a court baron. *Spelman*.

A hall, or chief mansion house; the usual appendage of a manor. *Domesday. Whishaw*.

The hall of a house, in the modern sense. *Reg. Jud.* 13 b. *Facio tibi aulam, ut tu facias mihi cameram*; I make you a hall, in consideration of your making me a chamber. *Bract.* fol. 19.

AULA REGIS, or REGIA. Lat. The king's hall; sometimes called *curia regis*, the king's court. A court established by William the Conqueror in his own hall or palace. It was the supreme court of the kingdom, and was composed of the king's great officers of state, resident in his palace, and usually attendant on his person; such as the lord high constable, and lord marshal, the lord high steward, and lord great chamberlain, the steward of the household, the lord chancellor, and the lord high treasurer. These high officers were assisted by certain persons learned in the laws, who were called the king's *justiciars*, or justices, and by the greater barons of parliament, all of whom had a seat in the *aula regia*, and formed a kind of court of appeal, or rather of advice in matters of great moment and difficulty. The presiding officer of this court was called the *chief justiciar* or justiciary of all England, (*capitalis* or *summus justitiarius totius Angliæ*.) *Bract.* lib. 3, tract. 1, c. 7, ¶2, fol. 105 b. *Gilb. Hist. C. Pleas. Introd.* 18. 3 *Bl. Com.* 37, 38. 1 *Reeves' Hist. Eng. Law*, 48. The *Aula Regis* was afterwards broken up into several courts, as the King's Bench, the Common Bench, Chancery, and Exchequer, (qq. v.) 3 *Bl. Com.* 39.

AULM, *Aume*. L. Fr. Soul. *Kelham*. See *Alm*.

AULNAGE. See *Alnage*.

AULNAGER. See *Alnager*.

AUMONE. L. Fr. Alms; another form of *almoïn* or *almoign*. *Tener* [*tenur*] *en aumone*; tenure in alms. *Britt.* c. 66. *Fraunche aumone*; frank *almoïn*; free alms. *Id. ibid.*

AUNCESTRE. L. Fr. An ancestor. *Britt.* c. 70.

AUNCIENT, *Aunciennes*. L. Fr. Ancient. *Aunciennes demeynes*; ancient *demesnes*. *Britt.* c. 66.

AUNCIATUS. L. Lat. Ancient. *Charta aunciata, et libertas anterior*; an ancient charter, and privilege of older date. *Bract.* fol. 57 b.

AUNZ, *Auntz*. L. Fr. Years. *Kelham*.

AURIFODINA. Lat. A gold mine. *Bract.* fol. 222 b.

AURUM REGINÆ. Lat. Queen's gold. 1 *Bl. Com.* 219, 220. See *Queen-gold*.

AUSINT, *Ausinc*, *Aussin*, *Ausoys*, *Ausieu*. L. Fr. Also, in this manner. *Kelham*.

AUSSI, *Auxi*. L. Fr. Also. *L. Fr. Dict.* *Litt.* sect. 95.

AUSTREGÆ. L. Lat. In old German law. Arbiters appointed to determine controversies, for the purpose of restraining the practice of private war so prevalent during the middle ages. 1 *Rob. Charles V.*, Appendix, note xlii.

AUT. Lat. Or. *Aut eo circiter*; or thereabouts. *Towns. Pl.* 18. For the use of *aut* in connexion with *vel*, *seu* and *sive*, see *Id.* 25.

AUTANT. L. Fr. As much; so much, like as. *L. Fr. Dict.*

AUTER, *Autre*. L. Fr. Another; other. *Litt.* sect. 39. *Auters*; others. *Id.* sect. 38. See *infra*.

AUTER ACTION PENDANT. L. Fr. In pleading. Another action pending. A species of plea in abatement. 1 *Chitt. Pl.* 454.

AUTER DROIT. L. Fr. Another right, another's right. See *En autre droit*.

ΑΥΤΕΘΟΥΣΙΟΣ, Αὐτεξούσιος. Gr. [from αὐτός, himself, and ἐξουσία, power.] In the civil law. One who has the control of his own actions, (Lat. *sui juris, sua potestatis*;) independent; not under the power of another. *Nov.* 118, c. 1. See *Sui juris*.

AUTERMENT. L. Fr. Otherwise.

AUTHENTICS. [Lat. *Authenticæ*.] In the civil law. A Latin translation of the novels of Justinian by an anonymous author; so called because the novels were translated *entire*, in order to distinguish it from the epitome made by Julian; (*Epitome Novellarum, or Juliani*.) 1 *Mackeld. Civil Law*, 60, § 72, note (c.) It is now termed the *versio vulgata* (common version), and was called by the glossators, *Corpus authenticum*. *Id. ibid.* note (b.)

Extracts from the novels, inserted by the glossators in the Code and Institutes. *Id.* 67, § 81.

AUTRE, *Autry*, *Altre*, *Auter*. L. Fr. Other, another. *Britt.* c. 54. *Kelham*. See *Auter*.

AUTREFOIS, *Autrefois*, *Autrefez*. L. Fr. At another time; formerly; before; heretofore. See *infra*.

AUTREFOIS ACQUIT. L. Fr. (Formerly acquitted.) In criminal law. A plea by a criminal to an indictment that he has been *formerly acquitted* on an indictment for the same offence. It being a maxim of the common law, that no man is to be brought into jeopardy more than once for the same offence, it is allowed as a consequence, that when a man is once fairly found not guilty upon any indictment or other prosecution, before any court having competent jurisdiction of the offence, he may plead such acquittal in bar of any subsequent accusation for the same crime. 4 *Chitt. Bl. Com.* 335, and notes. 4 *Steph. Com.* 404, and note (r). 1 *Chitt. Crim. Law*. 452—460. 1 *Russell on Crimes*, 831. *Wharton's Am. Crim. Law*, 136—146. *U. S. Digest*, *Autrefois acquit*, and *Autrefois convict*.

AUTREFOIS CONVICT. L. Fr. (Formerly convicted.) In criminal law. A plea by a criminal in bar to an indictment, that he has been *formerly convicted* of the same identical crime. 4 *Chitt. Bl. Com.* 336. 4 *Steph. Com.* 404. 1 *Chitt. Crim. Law*, 462. See *Autrefois acquit*.

AUTREFOIS ATTAINT. L. Fr. (Formerly

attainted.) In English criminal law. A plea of former attainder, in bar to an indictment. 4 *Bl. Com.* 336. 4 *Steph. Com.* 405, 6.

AUTRE or AUTER VIE. L. Fr. Another's life. A person holding an estate for or during the life of another is called a tenant *pur autre vie*, or *pur terme d'auter vie*. *Litt.* sect. 56. 2 *Bl. Com.* 120.

AUXI, *Auxy*, *Aussi*, *Avissi*. L. Fr. Al-  
so, so. *Litt.* sect. 5, 95. *Kelham*. See  
*Auxy*, *Aussi*.

AUXIBIEN, *Auxyrien*. L. Fr. As  
well. *Litt.* sect. 200.

AUXILIUM. Lat. In feudal and old  
English law. Aid; a kind of tribute paid  
by the vassal to his lord, being one of the  
incidents of the tenure by knight's service.  
*Spelman*. See *Aid*. *Auxilia ad filium*  
*primogenitum militem faciendum, vel ad*  
*filiam primogenitam marilandam*; aids to  
make the eldest son a knight, or to marry  
the eldest daughter. *Bract.* fol. 36 b.

A subsidy or tallage paid to the king.  
*Spelman*. *Cowell*.

In old practice. Aid or help to defend  
a suit. *Auxilium petere*; to pray aid.  
*Cowell*. See *Aid*.

AUXIONARIUS. See *Auctionarius*.

AUXY. L. Fr. As, so. *Auxy plain-*  
*ment*; as fully. *Artic. sup. Chart.* c. 1.  
*Auxy sovent que*; as often as. *Litt.* sect.  
430.

AVAIL, *Aval*. L. Fr. Downwards;  
below. The opposite of *amount* (q. v.) See  
*Avaler*.

AVAILE. L. Fr. Benefit or profit.  
*L. Fr. Dict.*

AVAL. Fr. [L. Lat. *avallum*.] In  
French law. The guaranty of a bill of ex-  
change; so called because usually placed  
at the foot or bottom (*a val*) of the bill. *Sto-*  
*ry on Bills*, § 454, 394.

AVALER. L. Fr. To descend or go  
down. *Amountaunt et nient avalaunt*; as-  
cending and not descending. *Britt.* c. 70.  
To lower, or bring down. *Avale*; lowered.  
*Id.* c. 63.

AVANT, *Avaunt*. L. Fr. Before. *Avant*  
*ces heures*; heretofore. *Artic. sup. Chart.*  
pr. *De cy en avant*; from now henceforth.

*Id.* c. 1. *De avant*; before. *En avant*;  
henceforward. *Issint avant*; so on. *L.*  
*Fr. Dict.* *Kelham*. *Avant dit, avaunt dit,*  
*avantdit, avandit, avandits*; before said,  
aforesaid. *Litt.* sect. 19, 21, *et passim*.

AVANTAGIUM. L. Lat. Advantage,  
profit. *Cum omnibus suis utilitatibus ac*  
*avantagiis inde provenientius*; with all its  
profits and advantages thereof issuing.  
*Regist. Eccl. Cantuar.* cited in *Cowell*.

AVANTURE. See *Aventure*.

AVEIGNER, *Avenier*. L. Fr. To come,  
or become; to happen. *Si cas aveigne*;  
if the case happen. *Britt.* c. 75. *Ou*  
*l'aventure serra avenue*; where the acci-  
dent shall have happened. *Id.* c. 1.

AVENAGE. [from Lat. *avena*, oats.]  
In old English law. A rent paid in oats.  
*Cowell*.

AVENANT, *Aveignaunt*. L. Fr. [from  
*avener*, q. v.] Value, price. *Kelham*. That  
which a thing comes to.

AVENER. L. Fr. To come, or be-  
come; to come to; to happen. See  
*Aveigner*. *Avenant*; becoming, proper,  
material. *Kelham*. *Avenantement, ava-*  
*naument*; becomingly, answerably, pro-  
perly. *Id.*

AVENTURE L. Fr. [from *avener*, to  
happen.] A mischance or accident by  
which the death of a man is occasioned  
without felony, as by some sudden illness,  
by falling into the water, or into the fire.  
*Britt.* c. 7. Britton makes a distinction  
between *aventure* and *mesaventure* (q. v.)

AVER. [L. Fr. *averrer*; L. Lat. *verifi-*  
*care*.] In pleading. To make a positive  
statement of fact, in opposition to argu-  
ment or inference. See *Averment*.

In old pleading. To avouch or verify.  
*Litt.* sect. 691. *Co. Litt.* 362 b. To  
make or prove true; to make good or jus-  
tify a plea. See *Averer*, *Verify*.

To offer to verify, or made good. *Cowell*.

AVER, *Avere*, *Averre*, *Aveir*, *Avoer*,  
*Auver*, *Auvere*. L. Fr. To have. *Kelham*.  
*Avomus, avomps*; we have. *Avium*; we  
had. *Avietz*; you have. *Avans*; having.  
*Id.* *L. Fr. Dict.*

AVER. Old Eng. [L. Lat. *averium*,  
*averum*.] A working beast; a horse or bul-

lock. *Cowell, voc. Averia. Spelman, voc. Averia. See Avers.*

**AVERA.** L. Lat. [from Fr. *ouvre, ouvrage*, labor, work.] In old English law. A day's work of a ploughman; a kind of customary service rendered by the king's tenants within the demesne lands of the crown. *Domesday. Spelman. Cowell.*

**AVERAGE.** [L. Lat. *averagium*; Fr. *avarie*; Germ. *haverie*; Dutch, *averie*.] In maritime law. A contribution made by all the parties concerned in a sea-adventure, to make good a specific loss or expense voluntarily sustained or incurred by some or one of them for the benefit of all. *Abbott on Ship. 473. Stevens on Av. 58. 1 Story's Eq. Jur. § 490. Story on Bailm. § 583.* Sometimes called *general average*, to distinguish it from special or *particular average*, (a very incorrect expression, used to denote every kind of partial loss or damage happening either to the ship or cargo from any cause whatever,) and sometimes by the name of *gross average* to distinguish it from customary average mentioned in bills of lading, which last species is sometimes called also *petty average*. *Abbott on Ship. 473, 474. Sir William Scott, (The Copenhagen), 1 Rob. Adm. R. 243. Lord Mansfield, C. J., 3 Burr. 1555. See Particular Average, Gross Average.*

Of the origin of this word little seems to be known with certainty. Cowell inclines to derive it from the same root with the word *average* in old English law, which signified a service of *carriage*, or a service performed by carrying with horses or carts, (or *cum averiis*.) "This contribution seemeth to be so called," he observes, "because it is proportioned after the rate of every man's *average*, or goods carried." But the idea of *carriage*, though an important one, is quite subordinate to that of *proportion*, which is the principal idea involved in the meaning of average in its modern sense. It is said, however, that average has not the sense of a medium or mean proportion in any European language except the English. *Stevens on Av. 96, note (1).* Emerigon thinks that the true etymology has not yet been discovered, and probably never will be. *1 Emerigon, (Tr. d'Assurances,) 601.*

**AVERAGE LOSS.** In maritime law. A partial loss of goods or vessels insured, for which the insurers are bound to compensate the insured in the proportion which

the loss bears to the whole insurance. *2 Steph. Com. 178.*

**AVERAGE, PETTY.** See *Petty Average*.

**AVERAGE.** [L. Lat. *averagium*, from *avera*, or *averia*, qq. v.] In old English law. A service by horse or carriage, anciently due by a tenant to his lord. *Cowell.* A labor or service performed with working cattle, (*opus quod averiis perficitur*), horses or oxen, or with wagons and carriages. *Spelman, voc. Averia.*

**AVERARE, Averrare.** L. Lat. [from Lat. *operare*, to labor, according to *Spelman*.] In old English law. To carry goods upon loaded horses, or other beasts, or in a wagon, (*cum averiis vel curru res vehere*); a duty formerly required of some customary tenants. *Spelman.*

To drive cattle (*averia*) to some fair or market. *Cowell.*

**AVERCORN.** [from Fr. *ouvre*, or *ouvrage*, work, according to *Somner*; or from *avoir*, to have or receive, according to *Cowell*.] In old English law. A reserved rent in corn, [grain,] paid to religious houses by their farmers or tenants. *Cowell.*

Corn drawn to the lord's granary by the working cattle (*averiis*) of the tenant. *Somner's Lex. cited ibid.*

**AVERER.** L. Fr. [from Lat. *verus*, true.] To aver, to prove, to make out to be true. *Si Jon puse averer que Peres, &c.*; if John can prove that Peter, &c. *Britt. c. 75. Si ceo soit avere, si cheyt lacion*; if this be proved, the action abates. *Id. c. 85.* This appears to have been a term peculiar to *civil* pleading and practice. *Id. c. 22.*

**AVERIA.** L. Lat. [L. Fr. *avers*, from *ouvre*, or *ouvrage*, work, labor.] In old English law. Working cattle (*operaria animalia*), as horses, oxen, mules. *Spelman. Reg. Orig. 81 b—83.*

Chattels (*catalla*) might sometimes be demanded under the name of *averia*. *Bract. fol. 159 b.* The singular of this word (*averium*), is used by *Bracton*, but rarely by other writers. See *Averium*.

**AVERIA CARUCÆ.** L. Lat. [L. Fr. *bestes des charues*.] Beasts of the plough which, at common law, were privileged over other cattle. *Co. Litt. 85 b. 3 Bl. Com. 9. Reg. Orig. 97 b.*



**AVERIUM.** L. Lat. [from Fr. *ouvre*, work, or *aver*, to have.] A live beast, or working animal. *Melius averium*; the best beast. *Bract.* fol. 60. *De meliori averio suo, vel de secundo meliori*; of his best beast, or second best. *Id.* fol. 86. 2 *Bl. Com.* 424. See *Heriot*. *Per unicum averium vel per duo*; by one beast or by two. *Bract.* fol. 223. See *Averia*.

**AVERIUM PONDERIS.** L. Lat. Full weight, or *aver de pois*. *De qualibet libra de averio ponderis, tres denarios*; of every pound of avoirdupois, three pence. *Cart.* 3 *Edw. II.* cited in *Cowell*.

**AVERLAND.** In old English law. Land ploughed and manured by tenants with their cattle (*cum averiis suis*), for the proper use of a monastery, or the lord of the soil. *Blount*.

**AVERMENT.** In pleading. A positive statement of facts, in opposition to argument or inference. 1 *Chitt. Pl.* 320. Usually expressed or introduced by the words,—“And the said — *avers*, and in fact says.” See *Id.* 324.

**AVERMENT.** [L. Lat. *verificatio*.] In old pleading. An offer to prove a plea, or pleading. The concluding part of a plea, replication, or other pleading, containing new affirmative matter, by which the party offers or declares himself “ready to verify,” that is, to prove it to be true. *Termes de la ley.* Co. Litt. 362 b. 3 *Bl. Com.* 313. *Finch, Law*, 359. In modern pleading, it is termed a *verification*, (q. v.)

The act of justifying or proving a plea, as well as the offer to do so. *Cowell. Blount*.

Proof, in general. A latent ambiguity of words is supplied or helped by *averment*. *Bacon's Max.* 90, *regula*, 23.

**AVERPENNY, Averpeny.** [*quasi* average penny.] In old English charters. Money contributed towards the king's averages, (carriages *cum averiis*); or money given to be freed thereof. *Rastal Expos. Verb.* cited in *Cowell. Blount*. 2 *Inst.* 35.

**AVERS.** L. Fr. Beasts or cattle. *Britt.* c. 27. *Litt.* sect. 212.

**AVERUM.** L. Lat. [from Fr. *avoir*, to have.] In old law. Goods, property, substance, royal treasure. *Spelman*.

A beast of burden. *Id.* See *Aver*.

**AVERSIO PERICULI.** Lat. In maritime law. An averting of, or escape from

danger. A policy of insurance upon goods employed in a foreign smuggling or contraband trade, assumes the *aversio periculi*. 1 *Emerigon*, 210—215. 3 *Kent's Com.* 263.

**AVET.** In Scotch law. To abet or assist. Avetting; abetting, helping or assisting. *Scotch Dict. Tomlins*.

**AVIA.** Lat. In the civil law. A grandmother. *Inst.* 3. 6. 1.

**AVISAMENTUM.** L. Lat. In old English law. Advice, counsel. *De avisamento et consensu consilii nostri concessimus*, (by the advice and consent of our council we have granted) was the common form of the king's grants. *Cowell*.

**AVISER.** L. Fr. To advise. *Kelham. Avisement*; advisement, determination. *Id. Aviz*; advice, opinion. *Id.*

**AVOEC, Avoeckes, Auveqs.** L. Fr. With. *Kelham*.

**AVOESON, Avoueson.** L. Fr. An advocate; patronage, foundation. *Id.*

**AVOID.** To render void. “How a deed may be *avoided*, or rendered of no effect.” 2 *Bl. Com.* 308.

In pleading. To evade, or escape. A party may confess and *avoid* the allegations in his adversary's pleading. *Steph. Pl.* 58. See *Avoidance*.

**AVOIDANCE.** A making void, or of no effect. See *Avoid*.

In English ecclesiastical law. A state of being void or vacant. The condition of a benefice, when void of an incumbent; the opposite of *plenarty*. *Jacob*.

In pleading. The evading or escaping from the legal effect of a pleading, by alleging new matter in answer to it. *Steph. Pl.* 199. See *Confession and avoidance*.

**AVOIR, Avoyer.** L. Fr. Property, estate, substance, goods, effects. *Gentz de petit avoir*; persons of small property. *Kelham*.

Ability, means, wealth, money. *Id.*

**AVOIRDUPOIS, Averdupois.** Fr. [from *avoir du poids*, or *aver de peys*, to have the proper weight; or from *averer*, to verify, to be of the true weight; L. Lat. *averium ponderis*.] The name of the common system of weights in England and the United States, by which goods in general, except

precious stones and metals, and medicines, are weighed. *Brande*. The pound avoir-dupois consists of sixteen ounces, and is supposed to be so called because it is of greater weight than the troy pound. *Cowell*. *Blount*. The term was also anciently applied to merchandizes weighed by this weight. *Id*. *Termes de la ley*. Kelham translates *avoir de pois*, "any bulky commodities."

This kind of weight has been expressly adopted in some of the United States by statute. 1 *N. Y. Rev. St.* [608] 617, §§ 9, 10.

**AVOUCHER**. L. Fr. and Eng. [L. Lat. *advocatio*, from *vocare*, to call or summon.] In old English practice. The calling or summoning into court by a tenant, of a person bound to him to warranty; that is, either to defend the right against the demandant, or to yield him other lands, &c., in value. *Co. Litt.* 101 b. Called by Lord Coke "a word of art," and employed by him as an example of the necessity of using "significant words, framed by art, which are called *vocabula artis*, though they be not proper to any language." *Id. ibid.* See *Voucher*.

**AVOUTERIE**. L. Fr. Adultery. *Britt.* c. 42.

**AVOW**, *Advow.* [L. Lat. *advocare*.] In pleading. To acknowledge and justify an act done. See *Avowry*.

**AVOWE**, *Avoue*. L. Fr. An avowee, advowee, or patron of a church; he to whom the right of advowson belongs. *Britt.* c. 95. *Stat. Westm.* 1, c. 1.

**AVOWESON**, *Avowson*. L. Fr. An advowson. *Britt.* c. 72.

**AVOWRY**. [L. Lat. *advocatio*, q. v.] In pleading. A pleading in the action of replevin, by which the defendant *avows* (*advocat*), that is, acknowledges the taking of the distress or property complained of, where he took it in his own right, and sets forth the reason of it; as for rent in arrear, damage done, &c. 3 *Bl. Com.* 149. 1 *Tidd's Pr.* 645.

**AVOWTERER**. In old English law. An adulterer. *Termes de la ley*. See *Advowtry*.

**AVOWTRY**. Adultery. *Termes de la ley*. See *Advowtry*.

**AVULSION**. [Lat. *avulsio*, from *avel-*

*lere*, to pluck or tear away.] In the civil and common law. A tearing off, severing, or forcible disruption; the sudden removal of soil from one man's estate to another's, by the immediate and manifest power of a stream, (*vi fluminis*.) *Dig.* 41. 1. 7. *Inst.* 2. 1. 21. A species of adjunction (*adjunctio*), produced by a stream of water carrying away a large piece of a person's land at once, and depositing it on that of another, [his neighbor, *vicinus*.] In this case, however, the property in the land so torn away is not changed until it has adhered so long to the other's land as to become part of it. Or, in the language of the Institutes, after it has adhered so long that the trees which it brought with it have taken root in the neighbor's land, such trees become his property. *Inst.* 2. 1. 21. This doctrine has been admitted into the common law ever since the time of Bracton. *Bract.* fol. 9. *Schultes' Aquatic Rights*, 116. 1 *Crabb's Real Prop.* 110.

**AVUNCULUS**. Lat. [Gr. *μητρὸς ἀδελφός*, *θεῖος*.] In the civil law. A maternal uncle; a mother's brother. *Inst.* 3. 6. 1. 2 *Bl. Com.* 230. *Avunculus magnus*; a great uncle, a grandmother's brother, (*aviam frater*.) *Inst.* 3. 6. 2. *Bract.* fol. 68 b.

**AVUS**. Lat. In the civil law. A grandfather. *Inst.* 3. 6. 1.

**AWAIT**, *Awayte*. In old statutes. A waylaying, or lying in wait to do mischief. *Stat.* 13 Ric. II. c. 1. *Cowell*. *Blount*.

**AWARD**. [L. Lat. *awarda*, *awardum*; L. Fr. *agard*, from Fr. *agarder*, to be guarded, observed or kept; so called because it is imposed on the parties to be observed or kept by them; (*quod ad observandum seu custodiendum, partibus imponitur*.) *Spelman*.] The judgment or decision made and given by an arbitrator or arbitrators, or an umpire, respecting any matter in dispute submitted to them. 3 *Bl. Com.* 16. *Billings on Awards*, 119. *Watson on Arb.* 174. *Russell's Arbitrator*, 234.

In old English law. The verdict of a jury. *Spelman*, voc. *Awardum*.

**AWARDA**, *Awardum*. L. Lat. An award. *Spelman*.

**AWARESTEE**, *Aweroust*, *Awroust*, *Awrust*. L. Fr. Doubt, ambiguity, uncertainty. *Kelham*. L. Fr. *Dict.*

**AWM**, *Awme*, *Awame*. In old English statutes. A measure of wine, or vessel con-

taining forty gallons. *Cowell. Blount. Termes de la ley.*

**AWNHINE**, *Awenhine*. Sax. A domestic. See *Agenhine*.

**AYANT CAUSE**. In French law. An assignee. *Bouvier*.

**AYD**, *Ayde*. See *Aid*.

**AYDONC**, *Aydonces*. L. Fr. Then. *Kelham*. See *Adonques*.

**AYLE**, *Ayel, Aiel, Aile*. L. Fr. [from *ael, aieul*, a grandfather.] In old English practice. The name of a writ (Lat. *breve de avo*.) which lay when a man's grandfather or grandmother was seised of lands in fee simple on the day of his or her death: and a stranger entered on that day, and abated, or dispossessed the heir of his inheritance. *F. N. B.* 221 D. 3 *Bl. Com.* 186. Abolished by statute 3 & 4 Will. IV. c. 27, s. 36.

**AYLOURS**. L. Fr. Besides, elsewhere, otherwise. *Kelham*. See *Ailors*.

**AYUNTAMIENTO**. Span. In Spanish American law. A municipal council; the common council of a town. 1 *White's Rep.* 416. 12 *Peters' R.* 442, note.

## B

**BACBEREND**, *Bacherende, Backberend*. Sax. Bearing or carrying upon the back. A term applied in early English law to a thief caught with the thing stolen upon his back, (*latrocinium deferens a tergo*); as *handhabend* or *hondhabende* signified one who had it in his hand, (*qui in manu rem furatam habuerit*). *Spelman*. Both these terms are used by Bracton as instances or proofs of what was termed *furtum manifestum*, apparent or open theft, where the thief was caught with the thing stolen in his possession. *Bract.* fol. 150 b, 154 b, 122 b. 2 *Reeves' Hist. Eng. Law*, 40. See *Furtum manifestum, Handhabend, Open theft*.

**BACKBEAR**. In forest law. Carrying on the back. One of the cases in which an offender against vert and venison might be arrested, as being taken with the mainour, or manner, or found carrying a deer off on his back. *Manwood. Cowell*. See *Mainour*.

**BACKBOND**. In Scotch law and con-

veyancing. An instrument equivalent to a declaration of trust in English conveyancing. A deed which, in conjunction with an absolute disposition, constitutes a trust. *Wharton's Lex.* 1 *Kames' Equity*, 108.

**BACKING**. In practice. Endorsement. In England, where a warrant of a justice of the peace in one county is to be executed in another, it must first be endorsed by the justice in such other county, which is termed *backing the warrant*. 4 *Bl. Com.* 291. A similar practice exists in some of the United States, though the term *backing* is rarely used. 2 *N. Y. Rev. Stat.* [707,] 590, § 5.

**BACULUS**. Lat. In old English practice. A staff, rod or wand, anciently used in the ceremony of making livery of seisin, where there was no building on the land. *Fiat seysina per fustim et per baculum*; seisin should be made by rod and staff. *Bract.* fol. 40. *Baculus nuntiatorius*; a warning or summoning stick. A white stick or wand, by erecting which on the grounds of a defendant in real actions, he was anciently warned or summoned to appear in court at the return of the original writ. 3 *Bl. Com.* 379.

A baton, such as combatants fought with in the *duellum*. *Frangitur eorum baculus*; their baton is broken. A term anciently applied to persons convicted of a felony on their own confession, signifying that they could not bring an appeal against any one. *Bract.* fol. 152. 2 *Reeves' Hist. Eng. Law*, 43.

**BAIL**, *Baile, Baillie*. L. Fr. [from *bail-ler*, to deliver.] Delivery of land; livery. *Bail de la seisine*; livery of seisin. *Britt.* c. 33. *Nul bail ne nul seisine*; no livery and no seisin. *Id.* c. 40.

Delivery, in general. *Le bail des escripts*; the delivery of the writings. *Id.* c. 34.

Keeping or custody, guardianship. *En sa baillie*; in his keeping. *Id.* c. 66.

Bail, in the modern sense; as embracing the ideas both of delivery and of keeping. *Ceux que sont lesses par bail à ascuns, à respondre pur eux, cors pur cors*; those who are let by [to] bail to any, to answer for them, body for body. *Id.* c. 125.

To BAIL. [L. Fr. *bailler*; L. Lat. *balliare*; from Gr. *βάλλειν*, to send, or deliver.] To deliver, commit or entrust a thing to another, (*rem alteri tradere, vel committere*). *Spelman*, voc. *Balliare*. The derivatives of this word,—*bailment, bailor, bailee*,—are in more frequent use than the verb itself.

In practice. To deliver a person from arrest, or out of custody, to the keeping of other persons, on their undertaking to be responsible for his appearance at a day and place certain. *Bract.* fol. 123. To discharge a person from arrest, on his finding sureties for his appearance at a certain time and place. A person bailed on civil process is very commonly said to be *at large*, but in contemplation of law this is not strictly correct; he being always accounted to be in the custody of his sureties, until surrendered by them, or finally discharged. See *Bail*.

BAIL. [L. Fr. *bail, baile, baille*; L. Lat. *ballium*.] In old law. Safe keeping, or protection; (*custodia, protectio, tutela*.) *Spelman*, voc. *Ballium*. Co. Litt. 61 b. See *Bail*, L. Fr.

In practice. A delivery into safe keeping or protection, (*traditio in ballium*). *Spelman*, ub. *sup.* A delivery of a person arrested, out of the custody of the law, into the safe keeping or friendly custody of persons who become sureties for his return or appearance. *Id. ibid.*

The sureties themselves, into whose custody the party discharged from actual arrest is supposed to be delivered. 3 *Bl. Com.* 290. This is the only sense in which the word *bail*, as a noun, is now used; the act of bailing being still expressed in the bail-piece, by these words:—"C. D. is delivered to bail, [in the old forms, *traditur in ballium*] on the taking of his body, to J. N. and J. S.," &c. See *Bailpiece*, *Bail to the sheriff*, *Special bail*, *Common bail*.

The radical meaning of *bail* is undoubtedly, a delivery, (from Fr. *bailier*, to deliver); or, in its present use, a person to whom another is delivered, under certain stipulations; just as a *bailee*, (which is essentially the same word) in another branch of law, is a person to whom goods are delivered for a certain purpose. See *Bailee*. The sense of *safe keeping*, which also enters into its meaning, is derived from the old French and Italian law, in which *bailtie*, and *balio* (*baila, bailium, and ballium*.) signified guardianship, wardship, or protection. See *Baila, Balium*. Bail are regarded in law as the keepers of their principal, and are said to have him always "in a string," which they may pull whenever they please, and render him in their discharge. 6 *Mod.* 231. 1 *Tidd's Pr.* 285.

BAIL TO THE SHERIFF, OR BAIL BELOW. In practice. Persons who undertake that a defendant arrested upon mesne process in

a civil action shall duly appear to answer the plaintiff; such undertaking being in the form of a bond given to the sheriff, termed a *bail bond*, (q. v.) 3 *Bl. Com.* 290. 1 *Tidd's Pr.* 221. This kind of bail is called bail to the sheriff, because given to that officer, and for his security; and bail below, because subordinate or preliminary to bail to the action or special bail, which is termed bail above. *Id. ibid.* See *infra*.

BAIL TO THE ACTION, BAIL ABOVE, OR SPECIAL BAIL. In practice. Persons who undertake jointly and severally in behalf of a defendant arrested on mesne process in a civil action, that if he be condemned in the action, he shall pay the costs and condemnation, (that is, the amount which may be recovered against him,) or render himself a prisoner, or that they will pay it for him. 3 *Bl. Com.* 291. 1 *Tidd's Pr.* 245. This undertaking of the bail is termed their *recognizance*, and is effected by executing and acknowledging what is called a *bail-piece*. *Id. ibid.* See *Bailpiece*.

BAIL, COMMON. In practice. A fictitious proceeding, intended only to express the appearance of a defendant, in cases where special bail is not required. It is put in in the same form as special bail, but the sureties are merely nominal or imaginary persons, as John Doe and Richard Roe. 3 *Bl. Com.* 287.

BAILA. L. Lat. In old law. Protection, guardianship, safe keeping; bail. In *testamento relictus sub baila, seu tutela*, &c.; being left by the will under the bail or protection, &c. *Anon.* cited in *Spelman*, voc. *Bailus*. See *Balia*.

BAILABLE. In practice. Requiring, authorizing or admitting of bail; entitled to be discharged on bail. A *bailable action* is one in which a defendant may be obliged either to find bail on his arrest, or go to prison. A *non bailable action* is one in which bail cannot be required. *Bailable process* is that upon which a defendant may be held to bail. 1 *Arch. Pr.* 328, 337. A *bailable offence* is one for which the offender may be admitted to bail. 4 *Bl. Com.* 298. A *non bailable offence* is one where bail will not be allowed, but the offender must go to prison. A *bailable person* is one who when accused of an offence, is entitled to be admitted to bail. *Id.* 297.

BAIL BOND. In practice. A bond given to the sheriff on the arrest of a defendant upon mesne process in a civil action, in a penalty of double the sum endorsed on

the writ, and with a condition that the defendant shall appear, and put in special bail within a certain time specified. 1 *Tidd's Pr.* 223, 224. It is usually executed by the defendant himself, with two sureties, although one is sometimes accepted as sufficient. *Id. ibid. Petersdorff on Bail*, 203, *et seq.*

**BAIL COURT.** In English law and practice. An auxiliary court of the court of Queen's Bench at Westminster, wherein points connected more particularly with pleading and practice are argued and determined. *Holthouse.*

**BAIL PIECE.** In practice. A formal entry or memorandum of the recognizance or undertaking of special bail in civil actions, which, after being signed and acknowledged by the bail before the proper officer, is filed in the court in which the action is pending. 3 *Bl. Com.* 291. 1 *Tidd's Pr.* 250.

**BAILEE.** [from Fr. *bailler*, to deliver.] A person to whom goods are delivered or bailed for a certain purpose. See *Bailment*.

**BAILER.** See *Bailler*.

**BAILIE.** In Scotch law. A municipal magistrate, corresponding with the English alderman. *Brande. Encycl. Amer.*

A bailiff; a ministerial officer to whom writs are directed for service. *Home's Brit. Ant.* 61.

**BAILIFE.** *Baillif.* L. Fr. A bailiff; a ministerial officer with duties similar to those of a sheriff. *Per viscont ou per autre bailife le roy*; by a sheriff, or by another bailiff of the king. *Stat. Westm.* 1, c. 17. See *Id.* c. 15. *Britt.* c. 21.

The judge of a court. *Stat. Westm.* 1, c. 35. 2 *Inst.* 229.

A municipal magistrate. *Maire et bailifes*; mayor and bailiffs. *Stat. Gloc.* c. 12, 15.

**BAILIFF.** [L. Fr. *bailife*, *baillif*, *bailli*, *baily*, *bayly*, *baylie*; L. Lat. *balivus*, *ballivus*, *baillius*; from Fr. *bailler*, to deliver, commit or entrust; Gr. *βαλειν*, *βαλλειν*. *Spelman.*] A person to whom some authority, care, guardianship or jurisdiction is delivered, committed or entrusted, (*commisarius*): one who is deputed or appointed to take charge of another's affairs, (*qui rebus alienis curandis deputatur*); an overseer or superintendent, (*prepositus*); a keeper, protector or guardian, (*custos, tutor*); a steward, (*villicus*). *Spelman*, voc. *Balivus*.

A sheriff; a sheriff's officer or deputy. 1 *Bl. Com.* 344, 345.

The chief magistrate of a town. *Cowell*, vocc. *Mayor*, *Portgreve*.

A person to whom the charge, superintendence, or management of some estate or property is entrusted; and who is liable to account to the owner for the rents, profits, &c., which he may have received. *Tomlins. Whishaw.* See *Ballivus*.

The word *bailiff* is of Norman origin, and was applied in England at an early period (after the example, it is said, of the French,) to the chief magistrates of counties or shires, such as the alderman, the reeve or sheriff, and also of inferior jurisdictions, such as hundreds and wapentakes. *Spelman*, voc. *Balivus*. 1 *Bl. Com.* 344. See *Bailli*, *Ballivus*. The Lat. *ballivus* occurs indeed in the laws of Edward the Confessor, but *Spelman* thinks it was introduced by a later hand. *Balliva*, (*bailiwick*), was the word formed from *ballivus*, to denote the extent of territory comprised within a bailiff's jurisdiction; and *bailiwick* is still retained in writs and other proceedings as the name of a sheriff's county. 1 *Bl. Com.* 344. See *Balliva*. The office of bailiff was at first strictly, though not exclusively, a judicial one. In France the word had the sense of what *Spelman* calls *justitia tutularis*. *Ballivus* occurs frequently in the *Regium Majestatem*, in the sense of a judge. *Spelman*. In its sense of *deputy* it was formerly applied in England to those officers who by virtue of deputation, either from the sheriff or the lords of private jurisdictions, exercised within the hundred, or whatever might be the limits of their bailiwick, certain judicial and ministerial functions. With the disuse of private and local jurisdictions, the meaning of the term became commonly restricted to such persons as were deputed by the sheriff to assist him in the merely ministerial portion of his duty; such as the summoning of juries and the execution of writs. *Brande*. In modern practice these are either *bailiffs of hundreds*, or *bound bailiffs*. The word bailiff is also applied in England to the chief magistrates of certain towns and jurisdictions; to the keepers of castles, forests and other places; and to the stewards or agents of lords of manors. *Cowell. Blount*. In the United States, it is rarely used, except sometimes to signify a sheriff's officer or constable, and a party liable to account to another for the rents or profits of some property entrusted to him.

**BAILIFFS ERRANT.** [L. Lat. *ballivi errantes*, seu *itinerantes*.] In English law.

Bailiffs are so called in the old books from their *going about* the county, in the execution of their office. *Spelman*, voc. *Balivus*. *Cowell*.

**BAILIFFS OF FRANCHISES.** [L. Lat. *ballivi franchisiarum*.] In English law. Officers who perform the duties of sheriffs within liberties or privileged jurisdictions, in which formerly the king's writ could not be executed by the sheriff. *Spelman*, voc. *Balivus*. *P. Cyclopædia*. See *Liberty*, *Non omittas*.

**BAILIFFS OF HUNDREDS.** [L. Lat. *ballivi hundredorum*.] In English law. Officers appointed over hundreds, by the sheriffs, to collect fines therein, and summon juries; to attend the judges and justices at the assizes and quarter sessions; and also to execute writs and process in the several hundreds. 1 *Bl. Com.* 345. 3 *Steph. Com.* 29. *Bract.* fol. 116. See *Bound bailiffs*.

**BAILIFFS OF MANORS.** In English law. Stewards or agents, appointed by the lord (generally by an authority under seal,) to superintend the manor, collect fines and quit rents, inspect the buildings, order repairs, cut down trees, impound cattle trespassing, take an account of wastes, spoils and misdemeanors in the woods and demesne lands, and do other acts for the lord's interest. *P. Cyclopædia*. *Cowell*.

**BAILIUM.** L. Lat. [O. Fr. *baillie*.] In old law. Protection, custody; bail. *Spelman*. See *Ballium*.

The office, authority or jurisdiction, (Fr. *baillage*) of a bailiff, (*bailus* or *balivus*.) *Id.*

**BAILIVIA.** L. Lat. [from *balivus*, q. v.] In old law. A bailiff's jurisdiction, a bailiwick; the same as *bailium*. *Spelman*. See *Bailiwick*, *Balliva*.

**BAILIWICK.** [L. Lat. *balliva*, *baliva*, *bailivia*, *balia*, *balivatus*; L. Fr. *baillie*. Derived by some from Fr. *bailli*, a bailiff; and Lat. *vicus*, a village.] The district or jurisdiction of a bailiff or sheriff: a county, of which the sheriff is, or formerly was, the bailiff. The word is still retained in civil process in this sense. According to Blackstone it was introduced into the English law by the princes of the Norman line. 1 *Bl. Com.* 344. The word *sheriffwick* is sometimes used in the old books. *Doct. & Stud.* Dial. 2, ch. 42, p. 232.

In old English law. A liberty, or exclusive jurisdiction, which was exempted from the sheriff of the county, and over which

the lord of the liberty appointed a bailiff with such powers within his precinct as an under-sheriff exercised under the sheriff of the county. *Whishaw*.

**BAILLER, Bailer, Bayler.** L. Fr. To deliver, commit or entrust. *Celles chartres soient bailles a chescun viscont Dengleterre*; these charters shall be delivered to every sheriff of England. *Artic. sup. chart.* c. 1. See *To Bail*. *Soit baille aux seigneurs*; \*let it be delivered to the lords. The endorsement made upon a bill by the clerk of the house of commons, when it has passed the house, and is to be sent up to the lords. *P. Cyclopædia*. *Hob.* 111 a.

To lease. *Si home bailla son tenement à terme des ans*; if a man lease his tenement for a term of years. *Stat. Gloc.* c. 11.

To lend. *Sicome jeo bayle a un home mes barbits*; as if I lend to a man my sheep. *Litt.* sect. 71.

**BAILLI.** Fr. [from *bailler*, to deliver.] In old French law. A person to whom a judicial authority and jurisdiction were assigned or delivered by a superior.\* The term was applied both to those high officers who were appointed to act as judges in different districts of the kingdom, and to the inferior officers who presided in the lords' courts. 1 *Rob. Charles V.* Appendix, note xxiii. *Esprit des Loix*, liv. 38, c. 42. See *Bailiff*.

**BAILLIE.** L. Fr. A bailiwick. *Britt.* c. 75.

**BAILMENT.** [from Fr. *bailler*, to deliver.] A delivery of goods in trust, upon a contract expressed or implied, that the trust shall be faithfully executed on the part of the bailee. 2 *Bl. Com.* 451.—A delivery of goods for some particular purpose, or on mere deposit, upon a contract express or implied, that after the purpose has been performed, they shall be re-delivered to the bailor, or otherwise dealt with according to his directions, or, (as the case may be) kept till he reclaims them. 2 *Steph. Com.* 129.—A delivery of goods in trust upon a contract expressed or implied, that the trust shall be duly executed, and the goods restored by the bailee, as soon as the purpose of the bailment shall be answered. 2 *Kent's Com.* 558.—A delivery of a thing in trust for some special object or purpose, and upon a contract express or implied to conform to the object or purpose of the trust. *Story on Bailm.* § 2.

— All these definitions, except the last, are

based, with some variation, upon the two definitions of Sir William Jones:—"A delivery of goods on a condition, expressed or implied, that they shall be restored by the bailee to the bailor, or according to his directions, as soon as the purpose for which they were bailed shall be answered." *Jones on Bailm.* 1. "A delivery of goods in trust, on a contract expressed or implied, that the trust shall be duly executed, and the goods re-delivered as soon as the time or use for which they were bailed shall have elapsed or be performed." *Id.* 117. A very prominent feature of these definitions is the *restoration* or *re-delivery* of the article bailed to the bailor, which they declare to be one of the objects of the contract on the part of the bailee. This idea of *restoration* is entirely dropped by Sir William Blackstone in his definition, but is taken up again by Mr. Stephen, though with considerable modification, and is expressly adopted by Chancellor Kent, while on the other hand, no reference is made to it in the definition of Judge Story. It is clear that the restoration of the thing bailed to the bailor, either *in specie*, or in a new form agreed upon, does in fact constitute a part of the contract in nearly all the varieties of bailment; but it is no less clear that one species of bailment, and that the most important of all, (the *locatio operis mercium vehendarum*, or bailment of goods to be carried for hire,) is quite free from any such contract on the part of the bailee. The difficulty in defining bailment is to explain with sufficient clearness, what the contract is, and to avoid at the same time going into particulars not common to every one of its varieties.

**BAILOR.** The party who *bails* or delivers goods to another, in the contract of bailment. See *Bailment*.

**BAILOUR.** L. Fr. A surety. L. Fr. *Dict.*

**BAILY.** In old English law. A bailiff. *Co. Litt.* 61 b. *Cro. Jac.* 410. Used both as a French and an English word.

An attorney; one who appears and pleads for another. *Theol. Dig.* lib. 13, c. 17. Supposed by Lord Coke (*ub. sup.*) to be a Saxon word, signifying a safe keeper or protector. But it seems obviously formed from the Fr. *bailie* or *bailli*, (q. v.) *Spelman*, voc. *Balivus*.

**BAIULUS, Bajulus.** L. Lat. [Gr. *βαυλος*.] A protector, keeper, guardian, tutor or instructor. An officer at Constan-

tinople, who had the education and care of the Greek emperor's sons. *Spelman*. Supposed by some to be the origin of the Lat. *ballivus*, or *balivus*, and English *bailiff*. *Ducange*.

**BALEUCA, Baleuga, Banleuca.** See *Banleuca*.

**BALIA.** L. Lat. In old law. A bailiwick; the district, territory or jurisdiction of a bailiff. *Spelman*, voc. *Balius*.

**BALIUM, Ballium.** L. Lat. [Ital. *balio*, from Gr. *βαλιν*, or *βαλλειν*, to commit.] In old Italian law. Protection, guardianship, education. *Pupilli qui protectione ballii indigere noscantur, ipsorum balium cum administratione bonorum eis contingentium curia nostra suscipiat*; whatever minors shall be known to need the protection of guardianship, our court shall undertake their guardianship, with the management of the property belonging to them. *Constitut. Neapolit.* lib. 2, tit. 7, *apud Spelman*, voc. *Balius*.

**BALIUS.** L. Lat. In old law. A tutor, protector or guardian. *Spelman*.

**BALIVA.** L. Lat. In old English law. A bailiwick, or jurisdiction. *Ubi balivam habeat vel jurisdictionem*; where he has a bailiwick or jurisdiction. *Stat. Marlbr.* c. 2. 2 *Inst.* 105. See *Balliva*.

**BALIVATUS.** L. Lat. A bailiwick, district, province or county. *Spelman*. *Cowell*.

**BALIVIA.** L. Lat. A bailiwick. See *Balliva*.

**BALIVUS, Ballivus.** L. Lat. A bailiff. *Nullus balivus de cætero ponat aliquem ad legem manifestam*; no bailiff shall henceforth put any man to his open law. *Magna Charta*, c. 28. See *Id.* c. 35. *Balivi*; bailiffs; sheriff's officers. *Stat. Westm.* 2, c. 37.

**BALLENA, Balena,** (properly *Balæna*). L. Lat. A large fish mentioned in Bracton; probably a kind of whale. *Bract.* fol. 120, 120 b. 1 *Bl. Com.* 222.

**BALLIUM, Balium.** L. Lat. In old law and practice. Protection, custody, guardianship. *Spelman*. *Infantem dimissum sub ballio et tutela*, &c.; sent away when a child under the bail and protection. *Id.*

Bail or delivery; the delivery or bailing of a person out of prison under sureties for his appearance, (*sub vadimonio*.) *Spelman*.

Bail or sureties for a defendant's appearance, and to whom he was delivered for safe keeping. *Tradere in ballium*; to deliver to bail. *Bract.* fol. 123. *Stat. Marlbr.* c. 28. *Dimittere per ballium*; to discharge by or on bail. *Bract.* fol. 123. *Imposuit commune ballium*; put in common bail. 1 *Salk.* 8.

Delivery of goods. *Catalla felonum per visum et ballium coronatoris tradantur*; the chattels of felons shall be delivered by the view and bail of the coroners. *Chart.* 3 *Edw.* I. cited in *Cowell*.

An outer bulwark of a fortified place; the area or court yard contained within such enclosure. Hence the English word *bailey*, applied to places and buildings, as the Old Bailey. *P. Cyclopædia*.

BALLIVA, *Baliva*. L. Lat. In old law and practice. A bailiwick; the district or territory under the jurisdiction of a sheriff; a sheriff's county. *Co. Litt.* 61 b. *Infra-nominatus A. B. non est inventus in balliva mea*; the within named A. B. is not found in my bailiwick. *Kitch. Ret. Brev.* 287. This is still in strictness the proper form of a sheriff's return to process, where the party ordered to be arrested has not been found; though the emphatic words "not found" are all that are usually endorsed on the writ.

A district or place of jurisdiction, in general. See *Baliva*.

BALLIVUS, *Balivus*, *Baillius*, *Baillivus*. L. Lat. [L. Fr. *bailife*, *baillif*, *bailli*.] In old law. A bailiff, baily or bailie; a person to whom some authority or trust is committed or deputed. *Spelman*. *Cowell*. *Co. Litt.* 61 b.

A ministerial officer of justice. In this general sense, the word includes sheriffs and constables. *Bract.* fol. 117. *Magna Charta*, cc. 8, 17, 28, 35. 2 *Inst.* 44.

A sheriff's officer or deputy. *Bract.* fol. 116.

A steward. *Glanv.* lib. 11, c. 1. 2 *Inst.* 44.

One who acted for, or represented another, with an authority, however, less than that of an attorney. *Bract.* fol. 212 b.

A judge. *Reg. Majest.* lib. 2, c. 4. *Skene not. ibid.* *Magna Charta*, c. 28.

BALNEARI. Lat. [from *balneum*, a bath.] In the Roman law. Thieves, who stole the clothes of bathers in the public baths. *Dig.* 47. 17. 4 *Bl. Com.* 239.

BAN, *Bann*: pl. *Banns*. [L. Lat. *banus*, *bannum*; pl. *banni*, *banna*.] In old law. A proclamation or public notice. Any public summons or edict, whereby a thing is commanded or forbidden; a sentence of excommunication, publicly proclaimed; a declaration of outlawry; a denunciation or curse. *Cowell*. *Blount*. *Tomlins*. See *Bannus*, *Bannum*, *Banns*.

A national army levied by proclamation. See *Arriereban*, *Heribannum*.

BANC. [L. Lat. *bancus*; L. Fr. *banke*, *bancke*, *banque*.] Bench; the place where a court permanently or regularly sits. This word is probably an abbreviation of *bancus*, and is still used, as in the phrase *in banc* (q. v.) though it is written also *bank*. See *Bancus*, *Bank*, *Bench*.

BANCHE. L. Fr. Bench; a name formerly given to both the English courts now termed the Queen's Bench, and the Common Pleas. *De lun bancke et de lautre*; of the one bench and of the other. *Britt.* c. 21. See *Bank*.

BANCUS. L. Lat. In old English law and practice. A bench, or high seat; a seat of judgment, or tribunal for the administration of justice. See *Bench*.

The original name of the English Court of Common Pleas; afterwards distinguished as *communis bancus*, the common bench. See *infra*. *Justitiiarii de banco*; justices of the bench. *Bract.* fol. 149, 353 b. *Justitiiarii residentes in banco*; justices sitting in the bench. *Id. ibid.* *Id.* fol. 105 b, 108. *Coram justitiiariis in banco residentibus*. *Glanv.* lib. 11, c. 1. *Id.* lib. 2, c. 6. *Dies in banco*; a day in the bench. *Bract.* fol. 353 b, 360, 361. See *Dies in banco*. *Ad bancum*; at, or to the bench. *Id.* fol. 351, 353 b, 360 b.

A stall, bench, table or counter on which goods were exposed for sale. *Domesday*, cited in *Cowell*.

A seat, or place of residence. See *Francus bancus*.

*Bancus* appears as the distinctive name of the court afterwards known as the *Common Bench* (and in modern times as the *Common Pleas*,) soon after the Conquest, the appellation being probably derived from the stationary character of the court, which was permanently held at Westminster. *Maddox Hist. Excheq.* 539. 1 *Reeves' Hist. Eng. Law*, 57—59. It is constantly mentioned under this name by Bracton, as will appear from the references given in the definition (*supra*), being a very few of the



passages in which the word occurs. The same author describes very clearly its organization and jurisdiction, distinguishing it from the king's own court, (or *aula regia*), properly so called. *Habet enim plures curias*, &c.; the king has several courts in which divers actions are determined, and of these courts he has one of his own, (*habet unam propriam*), to wit, the *aula regia*, and chief [or supreme] justices who determine the king's own causes, and those of all other persons by plaint or by privilege, &c. He has also a court, and justices sitting in bench, (*habet etiam curiam, et justitios in banco residentes*), who have cognizance or jurisdiction of all pleas, which they are authorized to take cognizance of, and without warrant they have no jurisdiction or power. *Bract.* fol. 105 b. So again, he describes the justices of the latter court as *certo loco residentes, sicut in banco*, (sitting in a certain place, as in the bench.) *Id.* fol. 108. Hence the justices of this court were always described as *justitios de banco*, justices of the bench, or more fully, as *justitios regis de banco apud Westmonasterium*, the king's justices of the bench at Westminster, which is the proper technical title of the justices of the common pleas at the present day. *Bract.* fol. 149, 353 b. *Reg. Orig.* 19, et *passim.* *Gilb. Hist. C. Pleas*, 1. *Towns. Pl.* 211. After the dissolution of the *aula regia*, the court which took its place as the highest tribunal in the kingdom, assumed also the name of *bancus*, being further designated as *bancus regis*, (q. v.) the king's bench, to distinguish it from the original *bancus*, which was now called *communis bancus*, (q. v.) the common bench; the two courts being spoken of as *the benches*, (*banci*.) *Stat. Westm.* 2, c. 30. From this time the judges of these courts are described as *justitios de utroque banco*, or *utriusque banci*, justices of either bench, and in the Register certain writs are said to be returnable *coram justitiis domini regis de uno banco vel altero*; before the king's justices of one or the other bench. *Reg. Orig.* 199. So the clerks were said to be of the one bench and of the other, (*clers de lun banke et de lautre*.) *Britt.* c. 21. In modern times, the *Common Bench* has dropped the word by which it was at first exclusively designated, and is now generally known as the Court of Common Pleas; although the title "*Common Bench*" is still retained in the reports. 1 *Reeves' Hist. Eng. Law*, 245. See *Common Pleas, Bench*.

**BANCUS REGIS.** L. Lat. The king's bench, as supposed to be always held *coram*

*ipso rege*, before the king himself. See *Bancus, King's Bench*.

**BANCUS REGINÆ.** L. Lat. The queen's bench. See *Queen's bench*.

**BANCI NARRATORES.** L. Lat. In old English practice. Countors of the bench, sometimes called serjeant countors; advocates or pleaders. *Placitantium advocatorum*, (*quos banci narratores vulgariter appellamus*); of the pleading advocates, whom we commonly call countors of the bench. *Matt. Par. Hist.* 1077, cited 1 *Bl. Com.* 24, note (t). *Steph. Pl. Appendix*, Note (8). A class of advocates peculiar to the bench (*bancus*), as the English Court of Common Pleas was anciently called; answering to serjeants at law, who, until very recently, enjoyed a monopoly of the practice of that court. See *Bancus, Countor, Serjeant*.

**BANE.** In old English law. A public denunciation of a malefactor; the same with what was called *hutesium*, hue and cry. *Spelman.* See *Hutesium*. *Bract.* fol. 116.

According to Cowell, who cites the same passage from Bracton, it signified the destruction or overthrow of anything, as he who was the cause of another's death was said to be *le bane*; a malefactor.

**BANERETTUS, Miles Banerettus, Benerettus.** L. Lat. A banneret or knight banneret. *Spelman.* See *Banneret*.

**BANK, Banke, Bancke, Banque, Banky.** L. Fr. In old English law. Bench; the bench. The name formerly given in French to the two superior common law courts in England. *Bank*, (*banke*, or *banque*) *le Roy*; the King's Bench. *Stat. Westm.* 1, c. 45. *Le commune bank*; the common bench. *Reg. Orig.* 198 b, *nota*. The latter court was also called *Bank a Westmynstre*; the bench at Westminster. *Britt.* c. 90. *Stat. Westm.* 1, c. 45. *Justices du banke*; justices of the bench (that is, the common bench.) *Stat. Gloc.* c. 12. *Les justices de son banke*; the justices of his bench, (that is, the king's bench.) *Artic. sup. Chart.* c. 5. The name was originally peculiar to the common bench. See *Bancus*.

This word, judging from the corrupted form *banky*, seems to have been sometimes pronounced in two syllables.

**BANK, Banc.** [L. Lat. *bancus*.] In practice. The regular term of a court of law, as distinguished from a sittings at

*nisi prius*. The ancient phrase *in banco*, sometimes translated *in bank* or *banc*, once exclusively used to denote the sittings of the English Court of Common Bench, is now constantly applied to any superior court of law, to denote the full court sitting at its regular law terms for the hearing of arguments, and is thus distinguished from a sittings at *nisi prius*, or a circuit court held by one of the judges for the trial of causes before a jury. Days in bank (*dies in banco*), are certain days in term appointed by the court or by statute, for the return of process, and the appearance of parties. See *Days in bank*. The day in bank was always distinguished from the day at *nisi prius*, or in the country, (*in patria*) as it was termed; that is, the day of trial. *Ita quod certus dies detur in banco, et certi dies et locus dentur in patria*; so that a certain day be given in bank, and a certain day and place be given in the country. *Reg. Orig.* 186.

**BANKRUPT.** [from L. Fr. *banke*, Lat. *bancus*, a bench, table or counter; and *roupt* or *rout*, Lat. *ruptus*, broken.] In English law. A trader who secretes himself, or does certain other acts tending to defraud his creditors. 2 *Bl. Com.* 285, 471. See *Act of Bankruptcy, Trader*.

The term *bankrupt* had its origin in the incidents of trade and commerce, and has come down to us in that connection, and through the medium of the laws. Bronson, J., 5 *Hill's N. Y. Rep.* 343. Its origin indeed is sufficiently indicated by its etymology,—the French or Norman *banke* and *banque*, and the Latin *bancus* having been used from a very early period to signify a bench, table or counter on which goods were exposed for sale, or money for exchange, thus denoting the occupation of a trader, a dealer in wares or merchandise, a merchant, a money changer, or banker in the strict sense of the word. See *Bancus*. The word *bankrupt* occurs for the first time in the title of the statute 34 and 35 Hen. VIII. c. 4. ("against such persons as do make *bank rupt*,"—a literal translation of the French idiom *qui font banque route*) which is the first of the English bankruptcy laws. 2 *Bl. Com.* 472, note (e.) The persons against whom this statute was directed are more particularly described as those "who obtain other men's goods on credit, and then suddenly flee to parts unknown or keep house, and there consume their substance without paying their debts." 2 *Steph. Com.* 190. *Cowell*. Subsequent statutes have more clearly defined their objects in this particular, and under their

operation, and by long and settled usage the term *bankrupt* has, in English law, acquired a specific and determinate meaning, being applied exclusively to *merchants* and *traders*, or those who get their livelihood by *buying and selling* for gain. 2 *Steph. Com.* 193—195. 2 *Kent's Com.* 389. See *Trader*. It is, however, not merely confined to *traders* in the legal sense of the word, but is still further narrowed, by being restricted to those traders *who do certain acts* defined by law, tending to the injury of their creditors; such, and such only, being the proper objects of the bankrupt laws. In this view, a bankrupt still retains the character of an *offender* which originally belonged to the term, though in a greatly modified sense, being no longer regarded as an actual criminal. He becomes a bankrupt, as any person becomes an offender, by committing an *act* defined by law, and by such commission makes himself liable, as an offender, to be proceeded against in the way of punishment. Hence the distinction between *bankrupt* and *insolvent*, which has always been so carefully maintained in English law. 2 *Bl. Com.* 484. See *Insolvent*.

**BANKRUPT.** In American law. The meaning of this term remains perhaps to be settled, although the tendency hitherto has been to give it the looser sense of *insolvent*, or in other words, to use the terms *bankrupt* and *insolvent* indifferently, as expressive of the same description of persons. See *Insolvent*.

At the time of the passage of the first bankrupt law of the United States, (Act of Congress, April 4, 1800, repealed by act of December 19, 1803,) the terms *bankrupt* and *bankruptcy* seem to have been understood in nearly or quite the technical sense they bore in the English statutes. Afterwards, however, the distinction between *bankrupt* and *insolvent* became gradually obscured, the courts finding it difficult to discriminate with accuracy between bankrupt and insolvent laws. Marshall, C. J., 4 *Wheaton's R.* 122. 2 *Kent's Com.* 390. This distinction was finally and effectually broken down by the late act of Congress, August 19, 1841, which expressly united the provisions of both descriptions of laws, and included (§ 1,) under the denomination of *bankrupts*, not only "merchants, retailers, bankers, factors, brokers, underwriters and marine insurers," who should commit certain acts of bankruptcy specified; but also, and indeed primarily, "all persons whatsoever, residing in any state, district or territory of the United States, owing debts which should not have been created in con-

sequence of a defalcation as a public officer, or as executor, administrator, guardian or trustee, or while acting in any other fiduciary capacity," and which they were unable to pay. A very able opposition was made to this extension of the meaning of the term *bankrupt*, in several judicial opinions delivered soon after the passage of the act, to which its early and total repeal (in 1843) has given additional weight and value. Opinion of Bronson, J., (dissenting), 5 *Hill's N. Y. Rep.* 329—371. Opinion of Wells, J., U. S. District Court, Missouri, 2 *N. Y. Legal Observer*, 185.

Judge Bouvier, in his valuable Law Dictionary, has restored in some degree the old distinction between bankrupt and insolvent, defining the former to be "a person who has done, or suffered *some act* to be done, which is by law declared an *act of bankruptcy*." The word *trader*, it will be seen, is here omitted, while, on the other hand, it is prominently employed by Dr. Webster, in giving even the *less technical sense of bankruptcy*:—"A trader who fails, or becomes unable to pay his just debts; an insolvent trader. In strictness no person but a trader can be a bankrupt." So a bankrupt is called by Mr. Justice Story, "a broken up and ruined trader." 3 *Story's R.* 453. These definitions, taken together, bring us very nearly to that of the English law. See *supra*.

**BANKRUPT LAW.** A law for the benefit of the creditors of a *bankrupt*, (q. v.) and for the relief of the bankrupt himself.\* A law which, upon a *bankrupt's* surrendering all his property to commissioners for the benefit of his creditors, discharges him from the payment of his debts, and all liability to arrest or suit for the same, and secures his future acquired property from a liability to the payment of his past debts. Webster. Mr. Justice Story describes a bankrupt law as "a law for the benefit and relief of creditors, and their debtors, in cases in which the latter are unable or unwilling to pay their debts." 3 *Story on Const.* 13, 14. Mr. Stephen speaks of it as a system of law of a peculiar and anomalous character, intended to afford to the creditors of persons engaged in trade a greater security for the collection of their debts than they enjoyed at common law, under the ordinary remedy by action. 2 *Steph. Com.* 189, 190. The present bankrupt law of England is contained in the statute 6 Geo. IV. c. 16, amended by 1 & 2 Will. IV. c. 56, 2 & 3 Will. IV. c. 114, 3 & 4 Will. IV. c. 47, and 5 & 6 Vict. c. 122. 2 *Steph. Com.* 193.

The leading features of a bankrupt law, or a system established by such a law, as distinguished from the ordinary law between debtor and creditor, are (1) the summary and immediate seizure of all the debtor's property; (2) the distribution of it among the creditors in general; and (3) the discharge of the debtor from future liability for the debts then existing. *Id.* 191. 2 *Burr.* 829.

The leading distinction between a *bankrupt* law and an *insolvent* law, in the proper technical sense of the words, consists in the character of the persons upon whom it is designed to operate; the former contemplating as its objects *bankrupts* only, that is, *traders* of a certain description; the latter, *insolvents* in general, or persons unable to pay their debts. This has led to a marked separation between the two systems, in principle and in practice, which in England has always been carefully maintained, although in the United States it has of late been effectually disregarded. In further illustration of this distinction, it may be observed that a *bankrupt law*, in its proper sense, is a remedy intended primarily for the benefit of *creditors*; it is set in motion at their instance, and operates upon the debtor against his will, (*in invitum*.) although in its result it effectually discharges him from his debts. An *insolvent law*, on the other hand, is chiefly intended for the benefit of the *debtor*, and is set in motion at his instance, though less effective as a discharge in its final result. Bronson, J., 5 *Hill's R.* 331, 348. 1 *Dane's Abr.* 317.

**BANKRUPTCY.** The act of becoming a bankrupt; the state or condition of a bankrupt.\* A *status*, or condition fixed by legislative provision. 2 *Bell's Com.* 214. A condition following upon the commission of certain acts defined by law.\* 2 *Steph. Com.* 191, 192. See *Bankrupt*.

In a looser sense, (as used in American law)—inability to pay one's debts; insolvency. The stopping and breaking up of business, because a man is insolvent, and utterly incapable of carrying it on.\* Story, J., 2 *Story's R.* 354, 359.

**BANLEUCA**, *Banleuga*, *Baleuca*. L. Lat. [Fr. *banlieue*; from *ban*, a territory and *leuca*, a league.] In old law. A space around certain cities, towns, monasteries, &c., distinguished from other ground, and protected by peculiar privileges. *Spelman*. In France, the word *banlieue* is used to signify a district around a city, usually, but not always a *league* on all sides, through

which the proclamation of the principal judge of the place has authority. *Id.* *P. Cyclopædia*, voc. *Ban*.

**BANNERET**, *Baneret*. [L. Lat. *banerettus*, *miles banerettus*.] In old English law. A name of dignity now nearly, if not entirely, extinct, denoting a degree next after a baron, and before a knight. 1 *Bl. Com.* 403.

**BANNI**, *Banny*. L. Fr. A banished man; an outlaw. *Britt.* c. 12, 13.

**BANNI NUPTIARUM**. L. Lat. The bans of matrimony. *Spelman.* *Cowell.* Bracton uses the singular *bannum*. *Bract.* fol. 307 b. See *Bannum*.

**BANNIMUS**. L. Lat. [from *bannire*, q. v.] We ban or expel. The form of expulsion of a member from the University of Oxford; by affixing the sentence in some public places, as a promulgation of it. *Cowell.*

**BANNIRE**, *Banniare*. L. Lat. [from *bannum*, q. v.] In old European law. To proclaim; to decree or declare publicly; to publish an edict, decree or proclamation, (*bannum*.) *Bannivimus*, *ut unusquisque iudex*, &c.; we have decreed that every judge, &c. *Decret. Childeb. ad L. Salic.* c. 8. *Spelman.*

To summon; to call out by edict, either to court or to military service; to summon to a standard, *bannum*, or banner. *Nullus ad placitum bannitur nisi*, &c.; no person shall be summoned to court unless, &c. *Capitt. ad L. Salic.* par. 1, c. 17. *Spelman.* *Omnes leudes in exercitu gradiendum banniti sunt*; all liege men, or vassals, are summoned to go into the army. *Spelman.*

To proscribe; or put to the ban, (*in bannum mittere*); to confiscate. *Multos bannivit, occupans res eorum*; he proscribed many persons, seizing their property. *Albert. Argentin.* A. D. 1348. *Spelman.* *Rebus omnibus in bannum missis*; all things being put to the ban. *LL. Longob.* lib. 2, tit. 43, l. 4. *Spelman.*

To expel by a public proclamation or ban; to banish; or according to *Spelman*, to expel from a *bannum* or certain territory, (*ejicere e banno vel territorio*.) *Spelman*, voc. *Ban*. *Reg. Orig.* 312 b. See *Bannimus*.

**BANNITIO**. L. Lat. [from *bannire*, q. v.] In old law. Banishment; expulsion by a

ban, or public proclamation. *Reg. Orig.* 312 b. See *Bannum*.

A banning, or putting to the ban. See *Bannire*.

**BANNITUS**, *Banniat*. L. Lat. [from *bannire*, q. v.] Banished, outlawed. *Reg. Orig.* 312 b.

An outlaw. *Pat. 15 Edw. III.* *Cowell.* *Blount.*

**BANNUM**. L. Lat. [Sax. *ban*.] In old European law. An edict, statute or public ordinance; a ban. *Pontes qui per bannum fieri solebant*; the bridges which used to be established by ban. *LL. Longob.* lib. 3, tit. 1, l. 11. *Spelman.*

A fine or penalty. *Bannum solvat*; he shall pay a ban. *L. Sax.* tit. 2, § 9. *Spelman.*

A tribute. *Capitt. Carol.* lib. 3, c. 68. *Spelman.* *Esprit des Lois*, liv. 30, c. 20, note.

Banishment or exile; proscription; confiscation. See *Bannire*.

An anathema or curse. *Synod. Confl.* A. D. 860. *Spelman.*

A proclamation or publication; the publication of marriage in a church. *Cum bannum et tertia denuntiatio fiat ante desponsationem*; when the ban and third publication is made before espousals. *Bract.* fol. 307 b.

A field or territory; the limit or precinct of a town. *Spelman.* *Villam cum omnibus bannis et attinentiis*; the town with all its bans (or bounds) and appurtenances. *Albert. Argentin.* cited *ibid.*

The following passage shows the use of the word *bannum*, and other Latin derivatives from the same root. *Bannire mandamus et divulgari publice bannitos. Bannum etiam, et causam banni, pro qua bannitus aliquis fuerit, et diem bannitionis, &c., in actis volumus contineri.* *LL. Neapolit.* lib. 2, tit. 1. *Spelman.*

**BANNUS**. L. Lat. In old law. A proclamation. *Bannus regis*; the king's proclamation, made by the voice of a herald, forbidding all present at the trial by combat, to interfere either by motion or word, whatever they might see or hear. *Bract.* fol. 142.

**BANNS**. [L. Lat. *banni*, *banna*, from Sax. *ban*, a public notice.] The public proclamation which the law of England requires of the intention of parties to enter into the marriage covenant. *Stat. 4 Geo. IV.* c. 76. 2 *Steph. Com.* 286, *et seq.* *Bract.* fol. 307 b. The proclamation must

be made in church, on three successive Sundays, during the time of the celebration of public worship, when it is presumed that the whole parish is present. The banns however may be dispensed with, by special license. *P. Cyclopædia. 2 Steph. Com. ub. sup.* A similar publication is required by law in several of the United States.

**BANQUE.** L. Fr. A bench ; the table or counter of a trader, merchant or banker. *Banque route* ; a broken bench or counter ; bankrupt ; or in old English, *bankerout*. See *Bankrupt*.

**BAR, Barr.** [Fr. *barre* ; L. Lat. *barra, exceptio peremptoria*.] In pleading. A special plea, constituting a sufficient answer to an action at law ; and so called because it *barred*, i. e. prevented the plaintiff from further prosecuting it with effect, and, if established by proof, defeated and destroyed the action altogether. Now called a special *plea in bar*. See *Plea in bar*.

The use of the term *bar* is common in the old books. *Plowd.* 26, 28. *Co. Litt.* 303 b, 372 a. Pleas are divided into dilatories and bars. *Hob.* 245. Bars again are divided into various kinds. *Plowd. ub. sup. Cowell. Boote's Suit at Law*, 108, note. A plea of this kind was still more anciently termed by Bracton, after the civilians, *exceptio peremptoria*, a peremptory exception. *Bract. fol.* 399 b. *Fleta*, lib. 6, c. 37. See *Exceptio*. The terms *barrer*, and *barre* were in common use in the law language of France in the year 1270, which is about the same period when they first made their appearance in English pleading. *Ducange, voc. Barra. Steph. Pl. Appendix, Note (25)*.

**BAR.** [L. Lat. *barra*.] In practice. The place in court which counsellors or advocates occupy while addressing the court or jury, and where prisoners are brought for the purpose of being arraigned or sentenced ; usually designated by a material enclosure of some kind, to which the name of a *bar* may with more or less propriety be given. Dr. Webster defines it to be, "the railing which encloses the place which counsel occupy in courts of justice." According to this definition, all the counsel in court properly sit or plead *within the bar*. In the English courts, on the other hand, many of the counsel, including the great body of *barristers* (who hence derive their name,) sit *without* the bar, and are for this reason called utter or *outer barristers* (q. v.) ; the space *within* being a privileged place allotted to king's or queen's counsel,

serjeants, and others having privilege or pre-audience. 3 *Bl. Com.* 28. 3 *Steph. Com.* 387. *Wharton's Lex. voc. Barrister*. The term *bar*, as expressive of a material enclosure, is used with much more distinctness in English than in American practice.

The presence of the court, either actual or constructive. A trial *at bar* (q. v.) is a trial had before the full court in term, in contradistinction to the ordinary trial *at nisi prius*, (q. v.)

The members of the legal profession, collectively, are figuratively called *the bar*, from the place which they usually occupy in court. The same figurative use of the term has led in England to the distinction between practitioners *at the bar*, including *barristers* in the proper sense, and practitioners *under the bar*, comprising special pleaders and conveyancers. *Warren's Law Studies*, 1, note. (Am. ed.) Attornies are considered as being always present in court. 1 *Tidd's Pr.* 80.

**BARATERIUS.** L. Lat. In old English law. A barretor, (q. v.) *Spelman*.

**BARATOR, Barector.** L. Lat. A barretor, (q. v.) *Spelman*.

**BARCA.** Ital. & L. Lat. In old law. A bark or barque ; a kind of merchant vessel. *Spelman*.

**BARCARIA.** L. Lat. In old English law. A barkary, or tan house ; a place to keep bark for the use of tanners. *Cowell. Towns. Pl.* 55.

**BARCARIUM, Barcarium, Berquarium.** L. Lat. [Fr. *bergerie* from *berger*, a shepherd.] In old English law. a sheepcote or sheepwalk ; a berghery. *Spelman. Cowell*.

*Barcarius, Barquarius, Berquarius.* A shepherd, a keeper of sheep. *Id.*

**BARECTATOR, Barector.** L. Lat. In old English law. A barretor, or barrator. *Spelman. See Barretor*.

**BARET.** L. Fr. A wrangling suit. *Brit. c.* 92. *Co. Litt.* 368 b.

**BARGA, Borgia.** L. Lat. In old law. A barge. *Spelman. Towns. Pl.* 226.

**BARGAIN AND SALE.** In conveying. The transferring of the property of a thing from one to another, upon valuable consideration, by way of sale. *Shep. Touch.* (by Preston), 221.

The instrument, conveyance or assurance by which such transfer is made. *Id. ibid.*—A kind of real contract, whereby the bargainor, for some pecuniary consideration, *bargains and sells*, that is, contracts to convey the land to the bargainee, and becomes by such a bargain a trustee for, or seised to the use of the bargainee; and then the statute of uses completes the purchase. 2 *Bl. Com.* 338.—A contract, in consideration of money, or other valuable consideration, passing an estate in lands and tenements, by deed indented and enrolled. *Bac. Abr.* Bargain and sale.

Bargain and sale is, in England, one of the ordinary modes of conveying estates, or, in the language of Sheppard, one of the "common assurances of the kingdom." *Shep. Touch.* 221. In the United States it is the most prevalent mode of conveyance; and gives a seisin to the grantee without any entry or pernaney of the profits. Parker, C. J., 15 *Mass. R.* 214. 4 *Kent's Com.* 495, and notes. The appropriate and operative words of such a conveyance are "*bargain and sell*," "*bargained and sold*," (L. Lat. *barganizavit et vendidit*,) although these are not absolutely necessary to a good bargain and sale, for words equivalent, such as "*alien*," or "*grant*," or "*demise and grant*," will suffice to make land pass. 2 *Inst.* 672. *Shep. Touch.* 222. 1 *Steph. Com.* 494.

A bargain and sale was originally a contract for the conveyance of land for a valuable consideration; and though the land itself would not pass without livery, the contract was sufficient to raise a use, which the bargainor was bound in equity to perform. 1 *Co.* 121 b. After the Statute of Uses was passed, the use which was raised and vested in the bargainee by means of the bargain, was annexed to the possession, and by that operation the bargain became at once a sale, and complete transfer of the title. 2 *Bl. Com.* 338. 4 *Kent's Com.* 496. See *Id.* 301, note. In other words, a bargain and sale was originally nothing more than the sale of a use, the possession or seisin of the land itself still remaining in the bargainor. Since the Statute of Uses, the bargain and sale vests the use, as it did before, and then the statute vests, transfers, or annexes the possession; thus completing the purchase. *Shep. Touch.* (by Preston), 221. 2 *Bl. Com.* 338. See 1 *Steph. Com.* 492—495. See *Use, Statute of Uses*.

**BARGAIN AND SALE** (of goods). An agreement to sell, followed and completed by an actual sale.\* *Com. Dig.*

**Bargain and Sale, (A.)**—This term is frequently applied to the transfer of property in goods; the word *bargain* denoting the arrangement of the terms upon which the one party sells, and the other buys; and the word *sale* expressing the completion of the contract, so as to pass the property from the seller to the buyer.\* *Shep. Touch.* 221. *P. Cyclopædia.* In such cases, the seller is called the *bargainor*, and the buyer the *bargainee*, and the two parts of the transaction taken together, [including the offer and acceptance of a consideration,] constitute the whole contract of buying and selling personal goods, so as effectually to change the property. *Id. ibid.*

A bargain and sale of chattels personal is sometimes termed an *assignment*, (q. v.) and may, in general be made by parol, that is, either by mere writing, or by mere word of mouth, and does not require the solemnity of a deed. But instruments in writing are frequent, and in some cases essential, and are either in the form of a mere note or memorandum, or of a regular assignment, which last is ordinarily denominated a *bill of sale*. 2 *Steph. Com.* 104.

**BARGANIZARE.** L. Lat. In old conveyancing. To bargain; to agree. *Towns. Pl.* 55. *Barganizavit et vendidit*; he hath bargained and sold. *Barganizasset*; he had bargained. *Reg. Orig.* 108.

**BARO, Barus, Viro.** L. Lat. [Lat. *vir*; Sax. *wer, war, var*; O. Fr. *ber*; Alam. *bar*; Græcobarb. *βαρος*.] In old European law. A man. *Si quis baroni viam suam obstaverit*; if any one shall stop a man's way. *L. Salic. tit.* 33, § 1. *Spelman.* *Si quis mort audit barum vel fæminam*; if any one hear of the death of a man or woman. *L. Alam. tit.* 76.

A freeman, or freedman, (*homo liber et libertinus*.) *Si ancilla fuerit, solvat solidum unum*; *si barus fuerit similiter*; *si servus fuerit medium solidum*; if it be a maid servant, he shall pay one shilling; if a freeman, the same; if a slave, half a shilling. *L. Alam. tit.* 95. *Spelman.*

A strong, able bodied man, (*vir fortis in laboribus*), who serves for hire, (*mercenarius*). *Gloss. Arabico-lat. Isidor. Orig. lib.* 9. c. 4. *Spelman.*

A warrior or chief, as distinguished by strength; a baron. *Sunt et alii potentes sub rege, qui dicuntur barones, id est, robur belli*; there are also other powerful men under the king who are called *barones* (barons), that is, the strength of war. *Bract. fol.* 5 b.

A life, or body guardsman, (*satelles*;

βαρος, βαρυνος, *barangus, varangus.*) *Spelman.*

A vassal or feudal tenant; a freeholder, (*liber tenens*); a proprietary owner of land, (*dominus proprietarius rei immobilis.*) *LL. Malcolm. II. Reg. Scot. c. 1, § 3. Skene in loc. Spelman.*

A head or chief vassal (*vassallus capitalis*), or tenant *in capite*; one who held his lands immediately of the king, by military service. *LL. Malc. ub. sup. Skene in loc.*

A baron, lord or nobleman *Bract. fol. 351 b. Spelman.*

A baron, or judge of the exchequer. *Bract. fol. 116 b. Spelman.*

A husband, (Fr. *baron*). *Spelman. See Baron.*

BARON. L. Fr. and Eng. [L. Lat. *baro*, q. v.] A lord or nobleman; the most general title of nobility in England. 1 *Bl. Com.* 398, 399.

A particular degree or title of nobility, next to a viscount. *Id. ibid.* 405.

A judge of the court of exchequer. 3 *Bl. Com.* 44. *Cowell. See Barons of the Exchequer.*

A husband. 1 *Bl. Com.* 432, 442. *See Baron and Feme.*

A freeman. *Co. Litt.* 58 a. *See Baro.* The chief citizens of London, York, and of some other places in which the citizens possess peculiar franchises, are called in early charters, *barons*; and the same name was given to the freemen of the Cinque Ports. *Spelman. Bract. fol. 117 b. P. Cyclopædia.*

The word *baron* is of Norman origin, and is supposed by *Spelman* to have been introduced into England about the time of the Conquest. *Baro*, its Latin form, occurs indeed in the laws of Edward the Confessor and other ancient collections, but *Spelman* supposes it to have been introduced in these cases by a later hand. As to its etymology, some have traced it to the *baro, varo, varro* and *vero* of the ancient Latin writers, others to the *βαρος* of the Greeks. *Spelman*, however, has shown satisfactory reasons for deriving it from the language of the barbarian nations who overran the Roman empire. Its radical and primitive meaning seems to have been the same with that of the Latin *vir*, a man, and runs through the *wer, war*, and *var* of the Anglo Saxons, the *ber* of the Franks, the *bar* of the Alamanni, (in their laws and charters *barus* and *paro*;) and the *baro* of the Lombards and Salians; thus denoting a common origin of the word at this period. *Spelman.* Hence the lower Greek *βαρος, βαρεus*, and

*βαρυνος.* This primitive meaning of *man* became gradually modified into that of *freeman, strong* or able-bodied *man*, (see *Baro*;) until the word came to be appropriated by the feudal law, to signify one who held lands of a superior by military and other services; a *vassal*, or feudal tenant; (see *Baro*;) one who acknowledged himself to be his lord's *man*, (*homo*, see *Homage*;) and whose *bodily ability* to bear arms was of course an essential qualification. It was after it had acquired this feudal sense of *tenant*, that it was introduced into the English law, the earliest use of the term being to denote that class of persons who held lands of a superior by military and other honorable services, and who were bound to attendance in the courts of that superior, to do homage, and to assist in the various business transacted there. *P. Cyclopædia.* The court itself in which these tenants had to perform their services, is called to this day the *court baron*, more correctly, (as some suppose) the court of the barons, (*curia baronum.*) 3 *Bl. Com.* 33. The term *baron*, however, soon came to be almost exclusively applied to those who held lands immediately of the king, the tenants *in capite*, or tenants in chief of the crown; and continued to be used in this sense for two centuries and a half after the conquest. For the origin and application of the term as a title of nobility in England, see *Spelman, Selden's Titles of Honor, Home's British Antiquities, P. Cyclopædia.*

BARON AND FEME. L. Fr. Husband and wife. A phrase of constant occurrence in the older law books, and not yet obsolete. *Baron*, in this connexion, is supposed by Blackstone and other writers, to have the sense of *lord*, implying superiority and protection. 1 *Bl. Com.* 442. *Co. Litt.* 112 a. But, according to *Spelman*, it is to be taken in its simple primitive sense of *man*. *See Baro.* *Baron and feme* therefore strictly means nothing more than *man and woman*, or *man and wife*; (Gr. *ἀνὴρ καὶ γυνή*, Lat. *vir et mulier*;) *mulier* being always used in the old law in the sense of wife, (*uxor.*) *Spelman. voc. Baro.* Of these terms, *feme, fem*, or *femme*, is still separately and frequently used to signify a woman, or wife. *See Feme, Feme covert, Mulier.* "A *feme* took *baron*;" that is, a woman took husband. *Cro. Eliz.* 825.

BARONAGE. [L. Lat. *baronagium.*] In English law. The collective body of the barons, or of the nobility at large. *Spelman. voc. Baronagium. P. Cyclopædia.*

**BARONAGIUM**, *Barnagium*. L. Lat. In English law. The whole body of the barons (*integra classis baronum*;) the *baronage* in the king's court answering to the *homage* in the court of the manor or inferior lord. *Spelman*, voc. *Baro*.

The retinue, attendants or following (Lat. *clientela seu comitatus*, Fr. *le train*) of a baron. *Id*.

**BARONATUS**. See *Baronia*.

**BARONET**. [L. Lat. *baronetus*, q. v.] An English name of dignity, which in its etymology imports a *little baron*. It is an hereditary dignity created by letters patent, and usually descendible to the issue male, but is not a title of nobility. 1 *Bl. Com.* 403. It was instituted by King James I., A. D. 1611, in order to raise a competent sum for the reduction of the province of Ulster in Ireland. *Id. ibid.* The title however occurs in records and statutes at a much earlier period. *Spelman*, voc. *Baronetus*.

**BARONETTUS**, *Baroncellus*, *Baronulus*, *Baronculus*, *Bariculus*, *Baroniculus*. L. Lat. [dimin. of *baro*, q. v.] In old English law. A baronet; a little or lesser baron. The term occurs in authors of the time of Edward II. See *Spelman*, by whom it is explained at length.

**BARONIA**, *Baronatus*. L. Lat. [from *baro*, q. v.] In old English law. A barony. The dignity, territory, patrimony or fee of a baron. *Spelman*, voc. *Baro*. *Co. Litt.* 83 b.

A manor, or the territory of a manor. *Spelman*, *ub. sup.*

A house of a certain kind in London. *Id.*

A part of a county corresponding with a hundred. *Id.*

*Caput baroniæ*; the head of a barony; the castle or chief house of the baron. *Id.* See *Barony*.

**BARONISSA**. L. Lat. A baroness, the wife of a baron. *Bract*. fol. 351 b.

**BARONY**. [L. Lat. *baronia*, *baronatus*.] In English law. The dignity of a baron. *Spelman*, voc. *Baronia*.

A species of tenure. To hold by *barony* anciently meant to hold lands by the service of attending the king in his courts, as barons; or, according to *Spelman*, to be a baron of the realm, (*esse baro regni*.) *Id.* *P. Cyclopædia*.

The territory of a baron, or the lands which form his tenancy. *Id.* A barony sometimes consisted of several manors, the

chief of which was called *caput baroniæ*. *Crabb's Hist. Eng. Law*, 72. See *Baronia*, *Caput baroniæ*.

**BARONS OF THE EXCHEQUER**. [L. Lat. *barones scaccarii*, or *de scaccario*.] The six judges of the Court of Exchequer in England, of whom one is styled the chief baron; answering to the justices and chief justice of other courts. *Holthouse. P. Cyclopædia*.

The court of exchequer was instituted immediately after the conquest, and it is probable that the judges were so denominated from the beginning. They are called *barons* in the earliest exchequer record, namely, the Pipe Roll of 31 Henry I. In accounting for this term, Mr. Reeves observes that the administration of justice in those days was so commonly attendant on the rank and character of a baron, that *baro* and *justitarius* were often used synonymously. 1 *Reeves' Hist. Eng. Law*, 51. See 1 *Rob. Charles V.*, Appendix, Note xxiii. *Barones*, however, it is thought may mean nothing more than the *men*, that is, the chief men of the exchequer. *P. Cyclopædia*. See *Baro*.

**BARRA**. L. Lat. [L. Fr. *barre*.] In old pleading and practice. A bar to an action; a plea containing a sufficient answer to the action; a plea in bar. See *Bar*.

The bar of a court. *Apprenticius* ad *barras*; an apprentice at the bars; a barrister. *Co. Litt.* 372 a. See *Apprenticius ad legem*. *Ad barram vocatus*; called to the bar. 1 *Ld. Raym.* 595. See *Barriater*.

**BARRASTERIUS**. L. Lat. A barrister; a pleader at the bar, (*repagularius causidicus*.) *Blount*.

**BARRATOR**. See *Barreter*.

**BARRATROUS**. Fraudulent; having the character of barratry. *Story*, J. 8 *Cranch R.* 39.

**BARRATRY**. [L. Lat. *barataria*; from Ital. *barratria*, or Fr. *barat*, deceit, fraud.] In marine insurance. Fraudulent conduct on the part of the master of a vessel, in his character of master, or of the mariners, to the injury of the owner of the ship or cargo, and without his consent; including every breach of trust committed with dishonest views. 3 *Kent's Com.* 305. An act committed by the master or mariners of a ship, for some unlawful or fraudulent purpose, contrary to their duty to their owners,



whereby the latter sustain an injury. Story, J., 8 *Cranch R.* 39.

In a larger sense, barratry comprehends negligence as well as wilful misconduct, and in this sense it is used by the French writers. *Pardessus Cours de Droit Com.* tome iii. n. 772. 3 *Kent's Com.* 305. In some recent American cases, the courts seem to be approximating to this meaning. *Id.* 300, note.

The term *barratry* is supposed by some to be derived from the Italian law, in which *barratria* has the sense of *fraud* committed in contracts and sales. *Dufresne*. Lord Ellenborough, 8 *East*, 126. Others have derived it from the Spanish *barateria*, which has a similar meaning. Johnson, J., 3 *Peters' R.* 222—230. From whatever source it may have been introduced, there is little doubt that radically it imports *fraud*, and hence it is generally agreed in English and American law that *fraud* must be a constituent of the act of barratry. 12 *Johns. R.* 128. 14 *Mass. R.* 1, Johnson, J., *ub. sup.* *Abbott on Ship* 183. But the word *fraud*, as used in defining this act, is itself not always understood in its stricter sense, as implying a dishonest or injurious intention. Hence acts done by the master of a vessel, even with the view of promoting the owner's interest, may nevertheless, in certain cases, amount to barratry. Accordingly, under the denomination of *barratry* are properly included not only the grosser acts or crimes of destroying or running away with a vessel or cargo, and stealing the cargo by the mariners, but also acts inconsistent with the owner's instructions, or not consonant to the laws of the land: such as sailing out of port without paying port duties, disregard of an embargo, breach of blockade, smuggling, cruising under a letter of marque against the owner's instructions and intentions, and deviation from the voyage in some cases. See *Abbott on Ship*. (Perkins' ed. 1846), 183, and note, *ibid.* The English and American cases are not altogether in harmony on this subject, the cause of which has been well explained by Johnson, J., in the opinion already referred to.

**BARRATRY.** In Scotch law. The crime of a judge who receives a bribe for a judgment. *Brande*. See *Barretor*.

**BARRETOR**, *Barrettor*, *Barrator*, *Barator*. [L. Lat. *barector*, *barectator*, *baratearius*. According to Coke, from Fr. *barat*, a wrangling suit, a brawl or quarrel; according to others, from Fr. *barat*, deceit,

fraud.] In criminal law. A common mover, exciter or maintainer of suits and quarrels either in courts, or elsewhere in the country; a disturber of the peace who spreads false rumors and calumnies, whereby discord and disquiet may grow among neighbors. *Co. Litt.* 368. *Stat. Westm.* 1, c. 18. 8 *Co.* 36. *Cro. Car.* 192. *Termes de la ley*. *Cowell*. See *Barratry*.

In old law. A litigious, contentious person, (*litigator*, *contentiosus*); one who haunts the courts, (*qui prætorium nimis frequentat*). *Spelman*. *Hortensius Cavalcans*, cited *ibid.*

In Scotch law. A simonist; a judge who takes a bribe for giving judgment. *Skene*.

**BARRETRY**, *Barratry*. [L. Lat. *barutria*, *barateria*.] In criminal law. The act or offence of a barretor, (q. v.); usually called *common barretty*. The offence of frequently exciting and stirring up suits and quarrels, either at law or otherwise. 4 *Bl. Com.* 134. 4 *Steph. Com.* 262. No one can be convicted of a single act of barretty; for every indictment for that offence must charge the defendant with being a *common barretor*. 4 *Chitt. Bl. Com.* 134, note. *Steph. Crim. Law*, 67. 4 *Steph. Com.* 262. See 11 *Pick. R.* 432. 1 *Bailey's R.* 379. *U. S. Digest*, *Barratry*.

This word is sometimes written *barratry*, thus confounding it with quite a different offence. See *Barratry*.

**BARRISTER**, (and formerly) **BAR-RASTER**. [L. Lat. *barrasterius*, from *barra*, a bar, q. v.] In English practice. One who appears at the bar of a court, in discharge of his duty as an advocate; one called to the bar (*ad barram*); a pleader at the bar, counsellor, or advocate; the lower of the two degrees of counsel in the English courts.\*

Barristers were at first styled apprentices at law (*apprenticii ad legem*), or apprentices at the bars, (*apprenticii ad barras*), answering to the degree of bachelor in the universities. They seem to have been first appointed by an ordinance of King Edward I., in parliament, in the 20th year of his reign. *Spelman*, *voc. Apprenticii*. *Dugdale Orig. Jur.* 55. 1 *Bl. Com.* 23, note. 3 *Id.* 27. 3 *Steph. Com.* 385. See *Apprenticius ad legem*. The great body of barristers are called, especially in the older books, *utter* or *outer barristers*, because they sit and plead *without (ouster) the bar*; as distinguished from those who have privilege to sit *within* the bar. See *Bar*.

**BARTON**, *Berton*, [from *bar*, a lord, and *tun*, a land or farm. *Spelman*, voc. *Baro*.] A word used in Devonshire, and other parts of England, for the demesne lands (*prædium dominicum*) of a manor; sometimes for the manor house itself; and in some places for outhouses and fold yards. *Spelman*. *Cowell*. *Blount*. 2 Co. 86, Tooker's case. See *Berton*.

**BAS**. Fr. [L. Lat. *bassus*.] Low, base, or inferior.

**BAS CHEVALIERS**. In old English law. Low, or inferior knights, by tenure of a base military fee, as distinguished from barons and bannerets, who were the chief or superior knights. *Cowell*. *Kennett's Gloss*.

**BASE COURT**. In English law. Any inferior court that is not of record, as a court baron, &c. *Kitchin*, 95, 96. *Cowell*.

**BASE ESTATE**. [Fr. *bas estat*.] In English law. That estate which base tenants have in their land. *Cowell*.

**BASE FEE**. In English law. An estate or fee which has a qualification subjoined thereto, and which must be determined whenever the qualification annexed to it is at an end. As in the case of a grant to A. and his heirs, *tenants of the manor of Dale*; in this instance whenever the heirs of A. cease to be tenants of that manor, the grant is entirely defeated. This kind of estate is a fee simple, because it is limited to the heirs general, and may by possibility endure forever, yet, as that duration depends upon the concurrence of collateral circumstances, which qualify and *debase* the purity of the donation, it is therefore not an absolute but a qualified, or *base fee*. 2 *Bl. Com.* 109, 110. 1 *Steph. Com.* 225.

A tenure in fee at the will of the lord. See *Base estate*, *Base tenant*. To hold in *fee base*, is to hold at the will of the lord. *Termes de la ley*. *Cowell*.

**BASE SERVICES**. In old English law. Such services as were only fit for peasants, or persons of a servile rank; as to plough the lord's land, to make his hedges, to carry out his dung, or other mean employments; villain services. 2 *Bl. Com.* 61.

**BASE TENANTS**. Tenants who performed to their lords services in villenage; tenants who held at the will of the lord, as distinguished from *frank* tenants, or freeholders. *Cowell*, voc. *Base estate*.

**BASE TENURE**. [L. Lat. *bassa tenura*.] A holding by villenage, or other customary service, as distinguished from the higher tenure in *capite*; or by military service; or from free service generally. *Cowell*. 2 *Steph. Com.* 51.

**BASILEUS**. [Gr. βασιλεὺς.] King. A title frequently given to the king in England, in charters before the conquest, in imitation of that assumed by the emperors of the east and west. 1 *Bl. Com.* 242. *Selden Tit. of Hon.* I. 2. 7 Co. 44, [22.] *Spence's Chancery*, 11.

**BASILICA**. Lat. [from Gr. βασιλική, royal, or βασιλεὺς, Basil.] A compilation of Roman and Greek law, in the Greek language, made during the latter part of the ninth and the beginning of the tenth centuries, under the superintendence of the Greek emperors of Constantinople. It was first undertaken by *Basilus Macedo*, (from whom it is supposed by some to derive its name,) and completed by his son *Leo Philosophus*, who published it as a code, A. D. 887. It consisted of sixty books, embracing the whole of Justinian's law collections, as well as the single constitutions issued by him and his successors. About the year 945, the emperor *Constantine Porphyrogenitus* undertook a new edition of the *Basilica*, (Ἀνακτάθαις τῶν βασιλικῶν,) through which the work has been preserved to the present time, although only thirty-six books have reached us complete. 1 *Mackeld. Civ. Law*, 61, § 75. This Romano-Greek code continued to be of authority until after the conquest of Constantinople, and the destruction of the Greek empire by the Turks, A. D. 1453; and even forms at the present day the principal foundation of the private law of Greece. *Id.* 64, § 77.

**BASSUS**, *Bassa*, *Basso*. L. Lat. In old English law. Low. *Bassa haia*; a low hedge. *Reg. Orig.* 257 b. *De alto et basso*; of high and low. A term applied to the absolute submission of all differences. *Cowel*, voc. *Alto et basso*.

**BASTARD**. [L. Lat. *bastardus*, from Brit. *bastard*, illegitimate; or according to *Spelman* from Germ. *bastart*, which he derives from *bas*, low, and metaphorically, spurious, impure, base; and *start*, Sax. *steort*, sprung, risen.] Of spurious origin, (*impure editus*;) base or low born. An illegitimate child; one that is not only begotten, but born out of lawful matrimony; [one who is born of an illicit union.] Though the law is not so strict as to require that a

child shall be begotten, it makes it an indispensable condition to render it legitimate that it shall be *born* after lawful wedlock. 1 *Bl. Com.* 454. 2 *Id.* 247. See 2 *Kent's Com.* 208. 4 *Id.* 413. 1 *Reeves' Hist. Eng. Law*, 117, note.

A child born after marriage, but under circumstances which render it impossible that the husband of his mother can be his father. 6 *Binn.* 283. *Bac. Abr.* Bastardy, A. *Bouvier*.

A child born beyond a competent time after the coverture has determined by divorce, or the death of the husband. *Id.* 2 *Stark. Evid.* 196, *et seq.*

**BASTARD EIGNE.** Fr. Bastard-elder, or eldest. By the old common law, where a man had a bastard son, and afterwards married the mother, and by her had a legitimate son, the first or elder child, was termed *bastard eigné*; and the second, or younger *mulier puisné*, or simply *mulier*, (*filius mulieratus*, the son of a *mulier* or wife.) *Glanv.* lib. 7, c. 1. 2 *Bl. Com.* 247. See *Eigné, Mulier*.

**BASTARDIA.** L. Lat. [from *bastardus*, q. v.] The plea or objection of illegitimacy. *Bract.* fol. 405, 416, c. 19.

**BASTARDY.** [L. Lat. *bastardia*.] A defect of birth, objected to one begotten out of wedlock. *Bract.* fol. 405, 416. This term is applied in the old books to pleas of illegitimacy, to suits for calling one a bastard, and generally to any examination or trial whether a man's birth be legitimate or not. *Cowell*.

The state or condition of a bastard. 1 *Bl. Com.* 454. See *Bastard*.

**BASUS, Bassus.** L. Lat. In old English law. Struck measure. *Per basum tolnetum capere, et nihil in cumulo*; to take toll by strike, and not by heap. *Cowell*.

**BASTON.** Fr. In old English law. A staff or club, a baton. The wardens of the Fleet were so called from the painted staves by which they were distinguished. *Spelman. Termes de la ley. Cowell. Officiarii de la baston*; officers of the staff. 10 *Co.* 65. 4 *M. Gr. & Scott.* 452, note.

**BATAILLE.** L. Fr. In old English law. *Battel*; the trial by combat or *duellum*. *La perilouse aventure de batailles*; the perilous chance of the combat. *Britt.* c. 25. *Venku par bataille. Id. ibid.*

**BATALARE.** L. Lat. In old law. To handle or brandish weapons; to strike (*percutere*); to fight, (*præliari*). *Spelman*.

**BATALIUM, Batalia.** L. Lat. [from *batalare*, q. v.] A battle or combat, (*prælium*.) *Spelman*.

**BATTELLUS.** L. Lat. [dimin. of *batus*, a boat, q. v.] In old law. A little boat; a boat or skiff. *Spelman. Bract.* fol. 122.

**ΒΑΘΜΟΣ, Βαθμός.** Gr. [Lat. *gradus*.] In the civil law. A degree of kindred. *Nov.* 118, cc. 1, 2, 3.

**BATTEL, Battail.** [Fr. *bataille*; L. Lat. *duellum, batalium*.] In old English law. Duel, or single combat. A species of trial or judicial combat, introduced into England, among other Norman customs, by William the Conqueror, in which a person accused of felony was allowed to fight with his accuser, under the apprehension that heaven would give the victory to the innocent or injured party. 3 *Bl. Com.* 337. *Id.* 346. It was also used as a mode of trial of issues joined on writs of right, in which the parties fought by champions. 3 *Id.* 337. It was abolished by statute 59 *Geo. III.* c. 46. 3 *Steph. Com.* 582, note. 4 *Id.* 413. See further on this head, 3 *Bl. Com.* 337. *Glanv.* lib. 2, c. 3, 4, 5. *Bract.* lib. 3, tr. 2, c. 21, fol. 140, 141 b. *Britt.* c. 22. *Dyer*, 301. *Termes de la ley*.

**BATTERE.** L. Lat. [from Sax. *batte*, a club.] In old European law. To beat or strike, (*verberare, percutere*); properly to beat with a club or stick, (*fustigare*). *Linum battere*; to beat flax. *Capitul.* 1, c. 81. *Spelman. Si servum aut ancillam battiderit*; if he beat a slave or maid servant. *LL. Longob.* lib. 1, tit. 8, l. 30. *Battutum*; beaten. *L. Alam.* c. 93, § 2. *Spelman*.

**BATTERY.** [L. Lat. *batteria*, from *battere*, (q. v.) Lat. *verberatio, pulsatio*.] The unlawful beating of another. 3 *Bl. Com.* 120.

Any unlawful touching of the person of another, either by the aggressor himself, or any other substance put in motion by him, provided it be wilfully committed, or proceed from the want of due care. 3 *Chit. Bl. Com.* 120, note. *Com. Dig. Battery*, (A). *Skin.* 387. 1 *Saund.* 14, note (c). *Am. ed.* 1846. *Hob.* 134. 1 *Russell on Crimes*, 751. *U. S. Digest*, Assault and Battery. Every battery includes an assault. *Hawk.* P. C. b. 2, c. 62, § 1.

**BATTURE.** Fr. In American law. A bottom of sand, &c., rising towards, or above the surface of a river; a species of alluvion. 18 *Louisiana R.* 122. This term is peculiar to the civil law of Louisiana. 3 *Kent's Com.* 428, note.

**BATUS.** L. Lat. [from Sax. *bat*, a boat.] In old English law. A boat. *Cowell. Towns. Pl.* 56.

**BAYLER.** Fr. In old English law. To deliver; to lend. *Litt. sect.* 71. See *Bailler*.

**BAYLY, Baylie.** L. Fr. A bailiff. *Litt. R.* 70.

**BEACONAGE.** [L. Lat. *beconagium*, from Sax. *beacon*, a signal.] In old English law. Money paid towards the maintenance of a beacon, or watchfire. *Spelman, voc. Beconagium. Cowell.*

**BEADLE, Bedel.** [from Sax. *beodan*, to bid.] In English ecclesiastical law. An officer attached to a church, [or parish,] who is chosen by the vestry, and whose business is to attend the vestry, to give notice of its meetings to the parishioners, and execute its orders, to assist the constable in apprehending vagrants, &c. *Shaw's P. L. c.* 19, cited 3 *Steph. Com.* 93, note (s). See *Bedel*.

**BEARERS.** In old English law. Persons who bore down, or oppressed others. *Cowell.* Classed by stat. 4 *Edw. III. c.* 11, with *maintainers*.

**BEASTGATE.** In Suffolk, England, imports land and common for one beast. 2 *Stra.* 1084. *Roscoe Real Act.* 485.

**BEASTS OF THE CHASE.** [Lat. *feræ campestræ*.] In English law. The buck, doe, fox, martin and roe. *Manwood*, part 2, c. 4, n. 2. *Co. Litt.* 233 a. In a common and legal sense, the term extends to all beasts of the forest. *Id. ibid.*

**BEASTS OF THE FOREST.** [Lat. *feræ sylvestres*.] In English law. The hart, hind, hare, boar and wolf. *Manwood*, part 2, c. 4, n. 1. *Co. Litt.* 233 a. Legally, the term includes all wild beasts of venery. *Id. ibid.*

**BEASTS OF THE WARREN.** [Lat. *feræ warrenæ*.] In English law. The hare, coney [and roe.] *Manwood*, part 2, c. 4, n. 3. *Co. Litt.* 233 a.

**BEAUMANOIR.** A celebrated French law writer, nearly or quite contemporary with the English Bracton, whose work, entitled *Coustumes de Beauvoisis*, contains the whole body of the law and practice of the French courts as it existed in his time. Dr. Robertson makes him a contemporary of Defontaines, who wrote in the reign of St. Louis, but Montesquieu places him after that writer, (whom he calls the oldest law writer in France,) and says he wrote a little after St. Louis' death, which happened A. D. 1270. 1 *Rob. Charles V. Appendix*, note xxv. *Esprit des Loix*, liv. 28, c. 38. The *Coustumes de Beauvoisis* has been considered by Mr. Barrington as a systematic and complete performance, throwing much light on the ancient common law of England, but it is rarely referred to by English writers. *Marvin's Leg. Bibliog.*

**BEAUPLEADER, Beaupleder, Beupleder.** [Fr. *beauplaider*; L. Lat. *de pulchre placitando*; from *beau*, *pulcher*, fair, and *plaider*, *placitare*, to plead.] In old practice. Fair pleading; apt or correct pleading; or, according to Mr. Reeves, the fair or favorable hearing of a plea, or suit. See *infra*.

Fines were anciently imposed by courts in England, for *beaupleder*, (*pro pulchre placitando*,) or fair pleading. The statute of Marlebridge, 52 Hen. III. c. 11, (affirmed by statute Westm. 1, c. 8,) ordained that such fines should no longer be taken, and gave a writ directed to the sheriff, bailiff, or whoever would demand the fine, prohibiting him from demanding it. *Cowell. 2 Reeves' Hist. Eng. Law*, 70. The common explanation of these terms in the old books is not very satisfactory. It is said by Fitzherbert that the fine for *beaupleder* meant a fine for not pleading fairly, or aptly to the purpose. *F. N. B.* 270 a. Lord Coke considers it as a fine imposed for the privilege of pleading fairly, by way of amendment, after a former vicious plea; which seems a more natural explanation. 2 *Inst.* 122, 123. The author of the *Termes de la ley* speaks of it as a fine taken of a party by a sheriff, or other bailiff, in his court, to the end that he shall not plead fairly, &c. Mr. Reeves thinks it did not signify a fine for amending a wrong plea, but a fine taken of suitors by bailiffs or judges of inferior courts, for a fair or perhaps favorable hearing of their cause, which fair hearing was called *pulchre placitare*, or *beaupleder*. 2 *Reeves' Hist. Eng. Law*, 70.

**BEC.** Sax. A book. See *Boc*.

**BED'.** An abbreviation for Bedfordshire in old pleadings. *Towns. Pl.* 147.

**BEDEL, Bedell, Beadle.** [L. Lat. *bedellus*, Sax. *bydel*, from *bydde*, [or *beodan*,] to bid, publish or declare; or, according to Spelman, to ask, beg, pray.] In English law. A crier, (*præco*,) messenger, summoner, apparitor, bailiff, underbailiff. *Spelman. Blount. Co. Litt.* 234 b. A crier or messenger of a court, who cites parties to appear, and answer therein. *Cowell. Termes de la ley.*

An officer of the forest, similar to a sheriff's special bailiff. *Manwood. Cowell. Blount.*

A collector of rents for the king. *Plowd.* 199, 200.

A well known parish officer. See *Beadle*.

**BEDELARY.** [Fr. *bedelarie*; L. Lat. *bedelaria*.] In old English law. The district of a bedel; the same as *bailiwick* is the district of a *bailiff*. *Cowell. Litt. sect.* 379.

**BEDELLUS.** L. Lat. A beadle. *Spelman.*

A hayward. *Towns. Pl.* 35.

**BEDEREPE.** [L. Lat. *bedrepium, precaria*; from Sax. *bydde*, to entreat, or pray, and *repe*, to reap corn.] In old English law. A service which some tenants were bound to perform; as to reap their landlord's corn in harvest. *Cowell. Blount.*

**BEFORE ME.** In practice. Ordinary words in the jurats of affidavits. Held, in a late case in the English Court of Queen's Bench, to be essential. 6 *Ad. & El. N. S.* 528. See *Jurat*.

**BELLAGINES, Bilagines.** L. Lat. [from Goth. *by*, a town, and *lagen*, law.] Municipal laws of the Goths. *Jornandes de reb. Get.* c. 11. *Spelman.* See *Bilagines, By Laws*.

**BELLUM.** Lat. War. *Jus belli*; the law of war.

**Bello paria cedunt reipublicæ.** Things acquired in war belong, or go to the State. 1 *Kent's Com.* 101. Sir W. Scott, (The *Elsebe*,) 5 *Rob. Adm. R.* 155, 163. 1 *Gallison*, 558. The right to all captures vests primarily in the sovereign. A fundamental maxim of public law.

The trial by single combat, or battel; the *duellum*. *Cowell.*

**BENCH.** [L. Lat. *bancus*; L. Fr. *banke, banque*.] A seat of judgment, or tribunal

for the administration of justice; the seat occupied by judges in courts.

The judges themselves, as occupying the judgment seat in courts. The term is figuratively used in this sense as a professional title, just as *the bar* is employed to denote the legal profession.

The ancient and original name of the English Court of Common Pleas, or Common Bench, as it is sometimes called. "Attaint was brought in *the Bench*." *Dyer*, 53 b. See *Bancus*.

The practice of appropriating an elevated and separate seat for the use of judges, seems to have been a common one from the earliest times. When the Roman prætor heard causes, he sat in the *forum* or *comitium* on a *tribunal*, (*in*, or *pro tribunali*,) which was a kind of stage or scaffold (*suggestum*,) made of wood, and moveable. *Cic. in Vat.* 14. *Suet. Cæs.* 84. In matters of less importance, he judged and passed sentence without form, at any time, and in any place, whether sitting or walking; and then he was said *cognoscere e, vel de plano*; to hear causes from, or on a level with his suitors, (*ex æquo loco, et non e tribunali, aut ex superiori loco*.) *Cic. Fam.* iii. 8. *Cæsin.* 17. *Suet. Tib.* 33. The inferior magistrates when they sat in judgment did not use a tribunal, but occupied *subsellia*, or lower seats. *Ascon. in Cic. Suet. Claud.* 23. Hence they were sometimes called *judices pedanei*, either *a pedibus*, from the feet, (as the prætor sometimes heard causes while standing, or on foot; *supra*,) or because they administered justice *pede plano*, with their feet on a level with those of the suitors. *Calvin Lex. Jurid. voc. Pedanei*.

Among the ancient Britons, justice was administered from seats or tribunals constructed of mounds or banks of turf, (*e tribunaliibus aggesto cespite constructis*.) *Spelman.* The right of occupying a bench or tribunal (termed the *jus banci*, or right of bench) was from an early period considered to be a peculiar privilege of the king's courts in England; the judges of inferior courts, such as hundred courts, and courts baron, being supposed to administer justice without such a formality. See *High justice*. These last are compared by Spelman to the *judices pedanei* of the Roman law (*supra*) from which source the idea of the distinctive privilege of a *bench* was most probably borrowed. Such inferior judges were called in France *juges dessous l'orme* (judges under the elm,) because they used to sit under an elm or other tree, near the lord's house. *Spelman, voc. Bancus*. And in much later times, in England, the hun-

dred court at Freibridge, in Norfolk, was held under an oak at Geywood; and the court for the hundred of Woolsey, in Herefordshire, was held under an oak near Ash-ton, which was called "the hundred oak." *Id. ibid. Blount, voc. Bank.*

**BENCHERS.** The principal officers of the English Inns of court. 1 *Steph. Com.* 20. 3 *Co. pref.* xviii. 4 *Reeves' Hist. Eng. Law*, 433. *Holthouse.* See *Inns of Court.*

**BENCH WARRANT.** In criminal law. A warrant issued by or from a *bench*, or court. A process for the arrest of a party against whom an indictment has been found. 1 *Chitt. Crim. Law*. 339. 4 *Steph. Com.* 387. 2 *N. Y. Rev. Stat.* [728], 609, § 55.

**Benedicta est expositio quando res redimitur a destructione.** That is a blessed exposition, (or interpretation) when a thing is saved [by it] from destruction. 4 *Co.* 26. See *Ut res magis valeat quam pereat.*

**BENEFICE.** [L. Lat. *beneficium.*] In English ecclesiastical law. An ecclesiastical living or church preferment, called in *Magna Charta*, (c. 14), *beneficium ecclesiasticum.*

In its technical sense, this term includes ecclesiastical preferments to which rank or public office is attached, otherwise described as ecclesiastical dignities or offices, such as bishoprics, deaneries and the like; but, in popular acceptance, it is almost invariably appropriated to rectories, vicarages, perpetual curacies, district churches and endowed chapelries. 3 *Steph. Com.* 77. By a late act of parliament, 1 and 2 *Vict. c.* 106, s. 124, a distinction is expressly made between benefices, and such preferments as have either rank or public office connected with them. *Id. ibid.* note (k).

*Benefice* is a term derived from the feudal law, in which it signified a permanent stipendiary estate, or an estate held by feudal tenure. 3 *Steph. Com.* 77, note (i). 4 *Bl. Com.* 107. See *Beneficium.* When the principle of tenure of a superior came to be applied to church preferments, the name of the estate thus holden was also adopted, and hence the care of souls or parishes in England obtained the appellation of *benefices*. 4 *Bl. Com.* 107. 4 *Steph. Com.* 206. *Tomlins.*

**BENEFICIAL.** [from Lat. *beneficium*, benefit.] Of benefit or advantage; producing or attended with profit or advantage; having or enjoying a benefit or profit.

A term applied both to estates and persons; as *beneficial interest*, *beneficial owner*.

**BENEFICIARY.** A word suggested by Mr. Justice Story, as proper to be substituted in place of the old established phrase *cestuy que trust*, which he terms "an awkward, barbarous, foreign idiom." 1 *Story's Eq. Jur.* § 321, and note. See *Cestuy que trust.*

**BENEFICIUM.** Lat. In early feudal law. A benefice; a permanent stipendiary estate; the same with what was afterwards called a *fief*, *feud*, or *fee* (qq. v.). 3 *Steph. Com.* 77, note (i). *Spelman.* A grant of lands to a retainer or follower, as a return for services to be rendered. 1 *Steph. Com.* 161. So called, according to some, because it was a gratuitous donation, given out of the mere goodwill (*ex mero beneficio*) and liberality of the grantor. *Ducange.* 1 *Robertson's Charles V.*, Appendix, note viii. The better opinion, however, appears to be that the name was adopted from the *beneficia* of the Roman emperors, which appear to have signified any kind of favors, privileges or emoluments, granted to a subject by the sovereign. *Sueton. Tiber.* 12. *Id. Tit.* 8. *P. Cyclopædia.* The term *beneficium* gave place to that of *feudum* about the close of the tenth century. See *Feudum.*

**BENEFICIUM.** Lat. In the civil law. A benefit or favor; any particular privilege. *Dig.* 1. 4. 3. *Cod.* 7. 71. 1 *Mackeld. Civ. Law*, 182, § 189. Used in the same sense in English law, as in the old phrase *beneficium clericale*, the clerical privilege, commonly translated *benefit of clergy*.

**BENEFIT OF CLERGY,** otherwise called **CLERGY.** [L. Lat. *beneficium*, or *privilegium clericale.*] In English criminal law. The clerical privilege; the privilege of the clergy; a clerk's privilege.\* An exemption from capital punishment in cases of capital felony, anciently allowed to criminals in holy orders, or (what was once equivalent,) *able to read*, and originally allowed to these only, though afterwards extended both to clergy and laity, and confined on the other hand to capital felonies of the lighter kind. 4 *Steph. Com.* 121. See *Clergy*, *Clergyable*, *Clerk.* The privilege was this:—if a person convicted of a capital felony was a clerk in orders, he was absolutely discharged, and handed over to the court christian; if a layman, under

the degree of a peer, who could read, he was discharged upon being *burnt in the hand*, that is, marked with a hot iron upon the brawn of the left thumb. See *Burning in the hand*. Whipping, fine and imprisonment were afterwards substituted for burning. 4 *Bl. Com.* 364—374. 4 *Steph. Com.* 436, note (b). Benefit of clergy was abolished in England by statute 7 & 8 Geo. IV. c. 28. 3 *Steph. Com.* 9, note (n). 4 *Id.* 121, 436, note (b).

The following extract from the case of *Armstrong v. Lisle*, which was a criminal appeal, (1 *Salk.* 61,) will serve to illustrate the manner in which this privilege was claimed, tried, and allowed by the court. The prisoner (or appellee,) being found guilty of manslaughter, and being asked what he had to say why judgment should not pass against him, *prayed his clergy*; (that is, claimed the benefit of clergy.) "Hereupon," says the reporter, "his clergy was allowed him, and he was tried by the ordinary of —, who gave him a psalm to read, whereof he read the first verse; and then Sir Samuel Astry asked the ordinary, '*legit vel non?*' (does he read or not,) who answered '*legit*,' (he reads,) whereupon the executioner burnt him without the bar, on the brawn of the left hand," &c. It is said that the ordinary usually gave the criminal who prayed his clergy, the fifty-first psalm to read (which is called in the vulgate, from its initial word, the *Miserere*;) hence termed the psalm of mercy. *Cowell*, voc. *Miserere*.

**BENEPLACITUM.** L. Lat. Good pleasure. *Ipsius patris beneplacito*; by the pleasure or good will of his father himself. 1 *Bl. Com.* 351. See *Durante beneplacito*.

**BENERETH, Benereth.** In old English law. A service which a tenant rendered to his lord, with his plough and cart. *Lamb. Itin.* 212. *Co. Litt.* 86. *Cowell*.

**BENEVOLENCE.** In old European law. An extraordinary aid granted by freemen to their sovereign, as a voluntary gratuity. *Stow's Annals*, 701. 1 *Robertson's Charles V.*, Appendix, note xxxviii. The same name was retained after such contributions had become compulsory. *Id. ibid.* Benevolences were introduced into England by Edward IV, as modes of raising money and were finally abolished by the Petition of Right, 3 Car. I., and by statute 1 W. & M. st. 2, c. 2. 1 *Bl. Com.* 140. 4 *Reeves' Hist. Eng. Law*, 127, 128.

**BENIGNE.** Lat. [from *benignus*, q. v.] Liberally, favorably, benignly.

**Benigne faciendus sunt interpretationes, propter simplicitatem laicorum, ut res magis valeat quam pereat.** Constructions [of written instruments] are to be made liberally, on account of the simplicity of the laity, [or common people,] in order that the thing [or subject matter] may rather have effect than perish, [or become void.] *Co. Litt.* 36 a. *Broom's Max.* 237.

This celebrated maxim, one of the oldest in the law, and still frequently quoted, is taken by Lord Coke from Bracton, or rather, made up of portions of the text of that author. Bracton's own words are, (fol. 95 b, closing a sentence,) *Benignæ enim faciendæ sunt interpretationes, ut res magis valeat quam pereat*. The words "*propter simplicitatem laicorum*" are taken from the preceding sentence, and the preceding clause of the same sentence, in which he observes that grants of advowsons by laymen would not be invalidated on account of the incorrect language of the instrument, (*propter incongruam dictionem donationis*,) but would be established by a benign interpretation, *propter simplicitatem laicorum*. The antiquity of the rule appears from his remark in the same sentence,—*et sic fit interpretatio ab antiquis*. *Id.* fol. 95 a, b.

**BENIGNUS.** Lat. Kind, favorable, liberal, benign; as opposed to strict, harsh or narrow. *Ex benigna interpretatione*; by a liberal interpretation. *Bract.* fol. 95. *Benignior*; more favorable.

**Benignior sententia in verbis generalibus seu dubiis est preferenda.** In [construing] general or doubtful words, the more favorable sense is to be preferred. 4 *Co.* 15. This maxim seems to be derived from those of the civil law. *Semper in dubiis benigniora preferenda sunt.* *Dig.* 50. 17. 56. 2 *Kent's Com.* 557. *In re dubia, benigniorem interpretationem sequi non minus iustus est quam tutius.* In a doubtful matter it is not less just than safe to adopt the more liberal interpretation. *Dig.* 50. 17. 192. 1.

**In contractibus, benigna; in testamentis, benignior; in restitutionibus benignissima interpretatio facienda est.** In contracts the construction is to be liberal; in wills, more liberal; in restitutions, most liberal. *Co. Litt.* 112 a.

**BEQUEATH.** To give personal property by will. Where personal property is intended to be given by will, the proper words to be employed are "I give and bequeath," &c. Where real property is to

be given, the words "I give and devise" should be used. See *Devise*.

**BEQUEST.** \*A gift of personal property by will; a gift of a legacy. See *Legacy*, *Devise*.

**BERCARIA**, *Berceria*, *Berqueria*. L. Lat. [from Fr. *berger*, a shepherd.] In old English law. A berchery; a sheepfold, sheep-cote or pen. *Cowell*. *Blount*. *Co. Litt.* 5 b.

**BEREWICA**, *Berewicha*, *Berewichus*, *Berewita*, *Berwita*. L. Lat. [from Sax. *berie*, a manor, and *wic*, a village; or (*berewita*) from *ber*, low, and *wite*, fine.] In old English law. A manor, or rather a part of a manor, separated from the main body; a smaller manor, belonging to a larger one, (*manerium minus ad majus pertinens*.) *Spelman*.

A hamlet, or small village, appurtenant to some town or manor, (*villula*, *manerii vicus*.) *Id.* *Blount*, voc. *Berwica*. A word of frequent occurrence in Domesday Book. *Id.* According to Lord Coke, it signifies a town. *Co. Litt.* 116 a.

**BERGIUM.** L. Lat. [Sax. *berg*, *berig*, *beorg*, *burg*.] In old law. A city, town, burg or borough. *Berg*, Sax. is properly a mountain. *Spelman*.

**BERGHMAISTER**, *Barmaster*, *Barmer*. [from Sax. *berg*, a mountain.] An officer having charge of a mine. A bailiff, or chief officer among the Derbyshire miners, who, in addition to his other duties, executes the office of coroner among them. *Blount*. *Cowell*.

**BERGHMOTE**, *Bergmoth*. [from Sax. *berg*, a hill, and *mote*, an assembly.] In old English law. A court for deciding controversies among the Derbyshire miners. *Blount*. *Cowell*.

**BERIA**, *Berra*, *Buria*. L. Lat. [In English names, *Berie*, *Bery* and *Bury*.] In old English law. A city, burgh, habitation, or manor, (from Sax. *byr*, and *bur*, a dwelling.) *Spelman*.

A plain adjoining a town. *Dufresne*. *Cowell*.

**BERK'**. An abbreviation for Berkshire, in old records. *Towns. Pl.* 147.

**BERNET.** Sax. [from *byrnan*, to burn: Lat. *incendium*.] In Saxon law. Burning;

the crime of house burning, now called arson. *Cowell*. *Blount*.

**BERQUARIUM.** L. Lat. In old English law. A sheepfold. *Domesday*. *Spelman*, voc. *Barcarium*.

A tan house. *Co. Litt.* 5 b.

**BERRA.** L. Lat. In old law. A plain; open heath. *Cowell*. *Berras assartare*; to grub up barren heaths. *Id.* See *Beria*.

**BERTON.** [L. Lat. *bertona*.] In English law. That part of a great country farm where the barns, stables, and other inferior offices stand, and wherein cattle are foddered, and other country business managed. *Cowell*. In Devonshire, according to Cowell, they called a great farm a *berton*; a small farm a *living*. See *Barton*.

*Bertonarii*. Farmers or tenants of *bertons*, who seem to have been tenants at will. *Cowell*. *Blount*.

**BERWICA.** L. Lat. In old English law. A manor, or part of a manor; a village appurtenant to a manor. *Cowell*. *Spelman*, voc. *Berewica*.

**BES**, (pl. *BESSES*.) Lat. In the Roman law. A division of the *as*, or pound, consisting of eight *uncia*, or duodecimal parts, and amounting to two-thirds of the *as*. 2 *Bl. Com.* 462, note (m). See *As*.

Two-thirds of an inheritance. *Inst.* 2. 14. 5.

Eight per cent. interest. 2 *Bl. Com.* ub. *sup.*

**BESAEEL.** L. Fr. A great grandfather. *Besaele*; a great grandmother. *Britt.* c. 89. *Besael*, *ael*, *piere*, *fitz*; great grandfather, grandfather, father, son. *Id. ibid.* *Besaele*, *aele*, *mere*, *file*; great grandmother, grandmother, mother, daughter. *Id. ibid.*

**BESAYEL**, *Besael*, *Besayle*. L. Fr. [from *besael*, *besayeul*, a great grandfather.] In old English law. A writ (L. Lat. *breve de proavio*), which lay where a great grandfather died seized of lands and tenements in fee simple, and on the day of his death a stranger abated, or entered and kept out the heir. *Reg. Orig.* 226. *F. N. B.* 221. D. 3 *Bl. Com.* 186. Now abolished with other real actions.

**BETROTHMENT.** [L. Lat. *desponsatio*.] A mutual promise, or compact between two parties, by which they bind themselves to marry. The word imports giving one's *troth*, i. e. true faith, or pro-



mise. It is the same with what is called by civilians and canonists, *sponsalia*, or espousals, and sometimes *desponsation*, and by the French *fiançailles*. *Encyclop. Amer.* See *Sponsalia*.

**BETTER EQUITY.** A term applied in English equity jurisprudence to the equity of a second incumbrancer taking a security which a prior incumbrancer did not; where the security was of a nature to protect him against any subsequent dealing to his prejudice by the party who had the legal estate; such better equity giving him a priority of claim.\* 1 *Chitt. Gen. Pr.* 470, note. 3 *Russell's R.* 1—65. A party may sometimes gain a *better equity* by giving notice of an incumbrance held by him. 1 *Chitt. Gen. Pr.* 470.

**BETTERMENTS.** In American law. Beneficial improvements made upon lands by the occupant or possessor, in building, fencing, draining, &c. *Encyclop. Amer.* 2 *Kent's Com.* 334, *et seq.* This word is a very literal translation of the *meliorationes* of the civil law. *Cod.* 4. 66. 3. 1 *Mackeld. Civ. Law*, 358, § 325.

**BETWEEN.** This word, in the boundaries of lands in deeds, excludes the *termini* named. 2 *Hilliard's Real Prop.* 349.

**BEWPLEADER.** See *Beaupleader*.

**BEYOND SEA,** (Lat. *extra*, or *trans mare*;) **BEYOND THE SEAS,** (*extra maria*;) **BEYOND THE FOUR SEAS,** (*extra quatuor maria*.) Words of frequent occurrence in English statutes, treatises and reports; originally suggested, no doubt, by the geographical position of England, and more peculiarly appropriate to the whole island of Great Britain. See *Four Seas*. The phrase "beyond the seas" occurs, in particular, in the statute of limitations, 21 Jac. I. c. 16, and is said to have been introduced on the union of the crowns, in place of the phrase "out of the realm," which previously had always been used. 1 *W. Bl.* 286. It does not seem, however, to have always been literally construed, and at the present time, no part of the United Kingdom of Great Britain and Ireland, nor the isles of Man, Guernsey, Jersey, Alderney or Sark, nor any islands adjacent to any of them, being part of the Queen's dominions, are deemed *beyond the seas*. *Holt-house. Wharton's Lex. voc. Limitation*.

The same phrase occurs in the statutes of limitations of several of the United States, which have generally been framed after the

English statute, and without much regard, in this particular, to strict geographical propriety. In most of these, it has been construed to mean, "out of the state," or "without the limits of the state." 3 *Wheaton's R.* 541. 11 *Id.* 361. 14 *Peters' R.* 145. In Pennsylvania, on the other hand, it has been construed to mean "without the limits of the United States," which approaches the literal signification. 2 *Dallas' R.* 217. 1 *Yates' R.* 329, S. C. McLean, J., 6 *Peters' R.* 291, 300. *Angell on Lim.* 211.

**BIELBRIEF.** Germ. [Dutch, *bylbrief*; Danish, *bilbrev*.] In European maritime law. A document furnished by the builder of a vessel, containing a register of her admeasurement, particularizing the length, breadth and dimensions of every part of the ship. It sometimes also contains the terms of agreement between the party for whose account the ship is built, and the ship builder. It has been termed in English, *the grand bill of sale*; in French, *contrat de construction ou de la vente d'un vaisseau*, and corresponds in a great degree with the English, French and American register, (q. v.) being an equally essential document to the lawful ownership of vessels. *Jacobson's Sea Laws*, 12, 13, and note. In the Danish law, it is used to denote the contract of bottomry. *Id.* 11.

**BIEN.** Fr. and L. Fr. Well, advisable. *Fait bien a prendre garde*; it is well [done] to take care. *Britt.* c. 80. *Paroles del bien estre*; words of well being; words of form; words not strictly necessary, but inserted in an instrument with reference to a possible contingency; words advisable to be used for greater security; words used *de bene esse*.\* *Britt.* c. 39. See *De bien estre, De bene esse*.

**BIENNIUM.** Lat. [from *bis*, twice, and *annus*, a year.] In old English law. The space of two years. See *Cessavit per biennium*.

**BIENS.** Fr. [Lat. *bona*.] Goods. At common law, this term includes all chattels, as well real as personal. *Co. Litt.* 118 b.

In the sense of the civilians and continental jurists, it comprehends not merely goods and chattels, but real estate. *Story's Confli. Laws*, § 13, note. 2 *Id.* § 375.

**BIGAMIA.** L. Lat. [from *bis*, twice, and Gr. *γῆμος*, marriage.] Bigamy. See *Bigamy*.

**BIGAMUS.** L. Lat. [See *Bigamia*.] In old English law. One who has been *twice married*, or has married more than one wife; a bigamist. Applied originally, in the canon law, to *clerks* or ecclesiastical persons, who were forbidden to marry a second time. See *Bigamy*. *Bigamus* is he that either hath married two or more wives, or that hath married a widow. 2 *Inst.* 273. *Bigamus, seu trigamus, &c., est qui diversis temporibus, et successive, duas seu tres, &c., uxores habuit*; *polygamus qui duas vel plures simul duxit uxores*; a bigamist, or trigamist, &c., is he who, at different times and successively, has had two or three, &c., wives; a polygamist is he who has had two or more wives at the same time. 3 *Inst.* 88.

The statute 4 Edw. I. st. 3, c. 5, ordained, in affirmance of the canon law, that if any person married a widow, or married a second time after the death of the first wife, he should be deprived of the benefit of clergy, if he was convicted of any clergyable felony whatever. From this provision it received the name of the statute *De Bigamis*. 2 *Reeves' Hist. Eng. Law*, 142. Under this statute, where a prisoner demanded the benefit of the clergy, to wit, his book, *bigamy* might be, and frequently was objected as a counter-plea, and was in this form;—"that he who demands the privilege of the clergy, was married to such a woman, at such a place, within such a diocese, and that she was dead, and that he hath married another woman within the same diocese, or within some other diocese, and so is *bigamus*." Or, if he had been but once married, then to say,—“that she whom he hath married is, or was a widow, that is the relict of such a one, &c.,” which pleas were tried by the bishop of the diocese where the marriages were alleged; and if so certified by the bishop, the prisoner lost the benefit of the clergy. *Termes de la ley*, voc. *Bigamy*. By statute 1 Edw. VI. c. 12, § 16, bigamy was declared to be no longer an impediment to the claim of clergy. 4 *Bl. Com.* 163, note (b). See *Bigamy, Benefit of Clergy*.

**BIGAMY.** [L. Lat. *bigamia*, from *bis*, twice, and Gr. *γάμος*, marriage.] In criminal law. The crime of marrying a second time during the life of the first wife or husband; or of having more wives or husbands than one at the same time. 4 *Bl. Com.* 163. 4 *Steph. Com.* 300. There are several excepted cases, however, in which a second marriage during the life of a former husband or wife, will not amount

to bigamy. See 4 *Chitty's Bl. Com.* 164, 165, note. 4 *Steph. Com.* 301, 302. *Wharton's Am. Crim. Law*. 552—555.

In canon law. The offence of marrying two wives successively, one after the death of the other; or once marrying a widow. 4 *Bl. Com.* 163, note (b). 3 *Inst.* 88. See *Bigamus*.

The use of the word *bigamy* in its present sense, in criminal law, although well settled, is, as Blackstone observes, an obvious corruption of the meaning, *polygamy* being the proper name for the offence of having a plurality of wives [or husbands] at once. 4 *Bl. Com.* 163. 3 *Inst.* 88. *Co. Litt. Hargr. & B.* Note 48, lib. 2. 2 *Ken's Com.* 80, 81. See *Polygamy*. *Bigamy* was a term invented by the canonists to describe the offence, peculiar to their law, of being *twice married*. See *Bigamus*. Mr. Stephen, in his valuable Commentaries, questions the correctness of Blackstone's criticism, on the following ground; that “whatever the number of marriages that may have taken place, the substance of the charge always is, that having a lawful wife still living, the offender married a *second* time, any intervening marriage being wholly immaterial, and out of the case, so far as the prosecution is concerned.” 4 *Steph. Com.* 300, note (n). But the learned commentator seems to have overlooked the point of Blackstone's objection, which is not that *bigamy* is incorrectly applied to cases where marriage has been contracted *more than twice*; but is addressed to the essential and well understood meaning of the term, and may be more specifically stated in the following form: that *bigamy*, a term always employed in the canon law to denote the offence of marrying a second wife *after the death* of the first, or of marrying two or more wives *successively*, was not properly applied to an offence, the essence of which consists in marrying a second time *during the life* of the first wife or husband, or of having two or more wives or husbands *at the same time*. The criticism of Blackstone turns upon something more than a question of mere etymological propriety, (between *bis*, *twice*, and *nōis*, *many times*, or *more than twice*, in the composition of the respective terms,) and is fully borne out by the authority of Lord Coke, who expressly defines polygamy, in the very terms of the modern definition of *bigamy*, to be the having of several husbands or wives at the same time; (*polygamia est plurimum simul virorum uxorumve connubium*;) and goes on to show the difference between *bigamy* and *polygamy*.

in the Latin passage given under *bigamus*, *supra*. 3 *Inst.* 88. The present improper use of the term bigamy seems to have grown up since the time of Coke, who makes no mention of bigamy in his very full enumeration of offences recognised by the English criminal law. In Massachusetts, the term *polygamy* has been restored to its proper use and meaning, as contended for by Blackstone. *Rev. Stat.* c. 130, § 2.

**BILAGÆ.** L. Lat. In old law. By laws. *Spelman*, voc. *Bellagines*. See *Bilagines*, *Laga*.

**BILAGINES**, *Bellagines*, *Bilaga*. L. Lat. [from *by*, Sax. a dwelling, Goth. a town, and *lagen*, laws.] In old law. The laws of towns; laws made by the inhabitants of towns for their own government, (*leges quas villarum incolæ sibi constituerint observandas*); municipal laws; by-laws. *Spelman*, voc. *Bellagines*. See *By-Laws*.

This word is found in Gothic writers, by whom it is usually written *bellagines*, (q. v.) *Jornandes de reb. Get.* c. 11, cited in *Spelman*.

**BILANX**, *Bilancia*. L. Lat. In old English law. A balance. *Pryn. Rec.* 196. *Towns. Pl.* 169. *Bilancia*; scales for weighing. *Reg. Orig.* 279 b.

*De bilanciis deferendis (breve)*; a writ for carrying or removing public scales. The name of an old writ in the Register, directed to the collectors of customs in certain ports in England, commanding them to take their scales and weights to another port, for the purpose of weighing merchandise for exportation. *Id. ibid.*

**BILINE.** A word essentially English, used by Britton in the sense of collateral. *En line biline*; in the collateral line. *Britt.* c. 119.

**BILINGUIS.** Lat. [from *bis*, twice, and *lingua*, a tongue.]. Of a double language or tongue; that can speak two languages. A term applied in the old books to a jury composed partly of Englishmen and partly of foreigners, which, by the English law, an alien party to a suit is, in certain cases, entitled to; more commonly called a jury *de medietate linguæ*. 3 *Bl. Com.* 360. 4 *Steph. Com.* 422. *Triatio bilinguis*; a trial by such a jury. *Molloy de Jur. Marit.* 448. See *De medietate linguæ*, *Half tongue*.

**BILL.** [L. Lat. *billa*; Sax. *bille*; Græcobarb. *βίλλος*.] A formal statement or

declaration of a thing in writing. This seems to be the radical meaning of the term, as the following definitions may illustrate:

A formal written statement of complaint to a court of justice; as a *bill*, simply so called, in old English practice; a *bill of privilege*, a *bill in equity*, and a *bill of indictment*.

A declaration by a court to its officers, in the nature of process; as the old *bill of Middlesex*.

A record or written statement of proceedings in an action; as a *bill of exceptions*.

A written statement of the terms of a contract, or specification of the items of a demand, or counter-demand; as a *bill of exchange*, a *bill single* and *penal*, a *bill of lading*, a *bill of sale*, a *bill of credit*, and a *bill of particulars*.

A draft of an act of the legislature before it becomes a law; a proposed or projected law.

A solemn and formal written declaration of popular rights and liberties, promulgated on certain extraordinary occasions; as the famous *Bill of Rights* in English history. See these varieties of the word defined, *infra*.

**BILL**, or **ORIGINAL BILL**. In old English practice. The ancient and most usual mode of commencing actions in the English Court of King's Bench. It was otherwise called a *plaint*, and was a written statement of the plaintiff's cause of action, always alleging a *trespass* as the ground of it; in order to enable the court to entertain the action. *Boote's Suit at Law*, 13, 14. 1 *Arch. Pr.* 337. 1 *Crompt. Pr. Intro.* lxxxi, (xxxv). It resembled the modern *declaration*, which was probably copied from it, and is frequently termed on the record, the plaintiff's bill. Actions commenced in this way, not being founded upon an original writ, were said to be *by bill*, or *by bill, without writ*. See *Breve*, *Original writ*. Both modes of proceeding, by bill and by writ, are now abolished by the effect of the statute 2 Will. IV. c. 39, and a new method substituted. 3 *Steph. Com.* 404, 405, note (l).

**BILLS OF CREDIT.** In constitutional law. Promissory notes or bills issued by a state government, exclusively on the credit of the state, and intended to circulate through the community for its ordinary purposes as money redeemable at a future day, and for the payment of which the faith of the state is pledged. 4 *Peters' R.*

410, 431. 1 *Kent's Com.* 408.—Paper issued by the authority of a state on the faith of the state, and designed to circulate as money. 11 *Peters' R.* 257. 1 *Kent's Com.* 408, note. The emission of these bills is prohibited by the constitution of the United States, Art. I. Sect. X.

It was said by Mr. Justice McLean, in *Briscoe v. The Bank of Kentucky*, (11 *Peters' R.* 257,) that "the definition of the term '*bills of credit*,' as used in the constitution, if not impracticable, will be found a work of no small difficulty." And in a late case in the Supreme Court of New-York, it was said that "all attempts to give a full, accurate and satisfactory definition of *bills of credit*, within the meaning of the constitution, have, thus far, failed." *Bronson, J.*, 6 *Hill's R.* 33, 37.

**BILL IN EQUITY, or CHANCERY.** In equity pleading. A complaint in writing, under oath, in the nature and style of a petition, addressed to the Chancellor, or judge or judges of a court of equity, setting forth all the facts and circumstances upon which the complaint is founded, and praying for such equitable relief, or for such decree as the party may conceive himself entitled to, or the court may deem proper to grant. It is the usual mode of instituting a suit in chancery, and consists of certain parts which are fully explained in the books on equity pleading. After the bill has been drawn, signed by the complainant, and his or her solicitor and counsel, and sworn to, it is left with the clerk or other proper officer of the court to be filed, and this is what is termed *filing a bill in equity*. 3 *Bl. Com.* 442. See *Mitford's Eq. Pl.* (by Moulton, ed. 1849,) 7, 35—121, [33—101]. *Story's Eq. Pl.* §§ 7—48. 1 *Daniell's Chanc. Pr.* (by Perkins) 351—454. 1 *Barbour's Chanc. Pr.* 33—47. *Bouvier, h. t.*

There are many varieties of bills, such as *original bills*, *supplemental bills*, bills of *revivor*, *cross bills*, bills of *discovery*, of *interpleader*, of *review*, and others, which are explained at length in the authorities above referred to.

**BILL OF EXCEPTIONS.** In practice. A formal statement in writing, of exceptions taken to the opinion, decision or direction of a judge delivered during the trial of a cause; setting forth the proceedings on the trial, the opinion or decision given, and the exception taken thereto; and sealed by the judge in testimony of its correctness. This bill is in the nature of an appeal; its object being to put the points decided upon

record, in order to bring them up before the court in banc, or a superior court, for review after trial. 3 *Bl. Com.* 372. 3 *Steph. Com.* 615. Marshall, C. J., 5 *Peters' R.* 190. *Raymond on Bill of Exceptions*, (Law Library, New Series, vol. 46.)

In strictness, the bill of exceptions ought to be engrossed and tendered to the judge during the course of the trial, or other proceeding out of which the exception arises, and to be *then* sealed. The usual (and, indeed, the invariable) practice however is, to reduce to writing the *substance* of the exception at the time it is taken, and it is then signed by the counsel on each side, and the bill itself is *afterwards* drawn up in form, and tendered to the judge to affix his seal. *Raym. Bill of Excep.* 33, 34. 2 *Tidd's Pr.* 862, 864. 1 *Arch. Pr.* 196, 210. Bills of exceptions were first introduced by the statute of Westminster 2, c. 31. 3 *Bl. Com.* 372. 2 *Reeves' Hist. Eng. Law*, 188.

**BILL OF EXCHANGE.** [L. Lat. *billa escambii*, *litera cambii*, *litera cambitoria*; Fr. *billet de change*, *lettre de change*.] A written order or request by one person to another, for the payment of money absolutely, and at all events. 3 *Kent's Com.* 74. *Bayley on Bills*, 1.—An open letter of request from one man to another, desiring him to pay a sum named therein to a third person, on his account. 2 *Bl. Com.* 466. 2 *Steph. Com.* 162. *Chitty on Bills*, 1.—An open letter of request addressed by one person to a second, desiring him to pay a sum of money to a third, or to any other to whom that third person shall order it to be paid; or it may be payable to bearer. *Kyd on Bills*, 3. This last definition has been approved by Mr. Justice Story, as presenting the important feature of negotiability, which the other definitions omit. *Story on Bills*, § 3. In common speech a bill is frequently called a *draft*. 2 *Bl. Com.* 467. See *Draft*, *Foreign bill of exchange*, *Inland bill of exchange*, *Drawer*, *Drawee*, *Acceptor*, *Payee*, *Indorser*, *Indorsee*, *Holder*.

**BILL OF INDICTMENT.** In criminal law. A written accusation of one or more persons, of some crime or misdemeanor, preferred to, and presented upon oath by a grand jury. If the jury, on examination, find this accusation to be supported by evidence, they write upon it the words "a true bill," (anciently *billa vera*), and this is called *finding an indictment*. 4 *Bl. Com.* 302, 305, 306. 4 *Steph. Com.* 369—374. See *Indictment*.

**BILL OF LADING.** [L. Lat. *literæ recognitionis*; Fr. *connoissement*.] In mercantile law. A written memorandum or instrument, signed (usually in triplicate) by the master of a vessel, acknowledging the receipt of goods on board, and undertaking (with certain exceptions,) to carry and deliver them to the person to whom they are addressed, (the consignee,) or his order, in as good condition as when received, for a certain remuneration or freightage.\* It is, in other words, a contract for the conveyance of goods in a general ship, and though signed by the master only, binds the owners also. 3 *Kent's Com.* 206, 207. *Abbott on Ship.* 319, *et seq.* *Smith's Merc. Law*, 175.

**BILL OF MIDDLESEX.** In old practice. A form of civil process, peculiar to the English court of King's Bench, and by which personal actions in that court were formerly commenced. It was originally always founded on a plaint or bill of trespass, filed, or supposed to be filed in court, (see *Bill*), and was a kind of *capias* directed to the sheriff of the county of Middlesex, and commanding him to take the defendant and have him before the king at Westminster, on a day prefixed, to answer to the plaintiff of a plea of trespass. *Boote's Suit at Law*, 36—42. It was termed a bill of *Middlesex*, because the court out of which it was issued usually sat in that county. 3 *Bl. Com.* 285. Once, when the court sat at Oxford, it was termed a bill of Oxfordshire. *Trye's Jus Filiz.* 101. 3 *Steph. Com.* 404, note (1). It was abolished by the statute 2 Will. IV. c. 39.

**BILL OF PARTICULARS.** In practice. A written statement or specification of the particulars of the demand for which an action at law is brought, or of a defendant's set-off against such demand, (including dates, sums, and items in detail,) furnished by one of the parties to the other, either voluntarily, or in compliance with a judge's order for that purpose. 1 *Tidd's Pr.* 596—600. 2 *Arch. Pr.* 221. 1 *Burr. N. Y. Pr.* 432—434.

**BILL OF PRIVILEGE.** In old English practice. A kind of process which formerly was the established method of proceeding against attorneys and officers of courts. 3 *Bl. Com.* 289. 2 *Arch. Pr.* 118, 119. In form, it was the same as a declaration in actions by bill, except that instead of concluding, "and therefore he brings his suit," it concluded with the words, "and therefore he prays relief." *Id.* 119.

**BILL OF RIGHTS.** In constitutional law. A formal and public declaration or assertion, in writing, of popular rights and liberties, usually expressed in the form of a statute, and promulgated on occasions of revolution, or the establishment of new forms of government, or new constitutions. The English statute of 1 W. & M. st. 2, c. 2, is denominated *κατ' ἐξοχήν*, the *Bill of Rights*. 1 *Bl. Com.* 128. Several of the United States have incorporated formal bills of rights into their constitutions. See 2 *Kent's Com.* 1—11.

**BILL OF SALE.** In conveyancing. A deed or writing under seal, evidencing the sale of personal property, and conveying the title to it.\* An assignment, in writing, of chattels personal. 2 *Steph. Com.* 104.

An instrument by which, in particular, the property in ships and vessels is conveyed. It is the true and proper muniment of title to a ship, and one which the maritime courts of all nations will look for, and in their ordinary practice require. Sir Wm. Scott, (The Sisters,) 5 *Rob. Adm. R.* 155, [142]. 3 *Kent's Com.* 130. See *Grand Bill of Sale*.

**BILL SINGLE, and PENAL.** A written engagement under seal for the payment of money, either on demand, or at a future day, formerly in common use; the *penal* bill being framed with a penalty, and the *single* bill, (which was the more usual form), without. *Cro. Eliz.* 548. *Whishaw*. Single bills are now, however, superseded by the modern bills and notes, and penal bills by bonds or obligations.

**BILL OF STORE.** In English law. A kind of license, granted at the custom-house to merchants, to carry such stores and provisions as are necessary for their voyage, custom free. *Cowell*.

**BILL OF SUFFERANCE.** In English law. A license granted at the custom-house to a merchant, to suffer him to trade from one English port to another, without paying custom. *Cowell*.

**BILLA.** L. Lat. A bill. *Spelman*. See *Bill*.

**BILLA CASSETUR, or QUOD BILLA CASSETUR.** (That the bill be quashed.) In practice. The form of the judgment rendered for a defendant on a plea in abatement, where the proceeding is *by bill*, (that is, where the suit is commenced by *capias*, and not by original writ). 2 *Arch. Pr.* 4.

**BILLA EXCAMBII, OF ESCAMBII.** L. Lat. A bill of exchange. See *Litera Cambii*.

**BILLA VERA.** L. Lat. (A true bill.) In old practice. The indorsement anciently made on a bill of indictment by a grand jury, when they found it sufficiently sustained by evidence. 4 *Bl. Com.* 308. *Doct. & Stud. dial.* 2, c. 54. p. 279. See *Indictment*.

**BILLET DE CHANGE.** Fr. In French law. A billet or bill of exchange. Pothier distinguishes this from a proper bill of exchange, (*lettre de change*.) The *billet de change*, he says, is when the party with whom the contract is made is not at present prepared to give the bill of exchange agreed on, and merely gives a *billet*, by which he engages hereafter to furnish one on the proper place. *Pothier de Change*, n. 4, cited in *Story on Bills*, § 2, note 1.

**BILLETA, Billetus.** L. Lat. In old English law. A bill or petition exhibited in parliament. *Cowell*.

**BILLETTUM.** L. Lat. In old English law and practice. A billet, bill or memorandum of the delivery of a writ, which the statute of Westminster 2, (c. 39,) allowed parties to require of the sheriff or undersheriff to whom it was delivered. 2 *Inst.* 449, 451.

**ΒΙΛΛΟΣ, Billōs.** Græcobarb. A bill. *Spelman*, voc. *Billa*. Meursius doubts if this be not a corruption of the Gr. βιβλος, a book. But *Spelman* makes it to be a word framed from the Sax. *bille*.

**BIPARTITE.** Fr. and Eng. [from Lat. *bipartitus*, from *bis*, twice or double, and *partitus*, divided.] In conveyancing. Of two parts; divided in two. *Litt. sect.* 370. An indenture was formerly called *bipartite*, when there were (as was most commonly the case), two parties, and two parts of the deed. *Co. Litt.* 229 a. *Shep. Touch.* 50. The word is now nearly obsolete, but *tripartite*, (of three parts), and *quadripartite*, (of four parts, qq. v.) are still used.

**BIRLAWS, Burlaws, Byrlaws.** [from Germ. *Baur*, a countryman, and *law*.] In Scotch law. Laws made by country people or husbandmen, respecting rural affairs. *Skene in Reg. Maj.* lib. 4, c. 39, § 8. *Spelman*, voc. *Bellagines*. Supposed by *Spelman* to be the same with *by-laws*. See *Burlaws*.

**BIRRETUM, Birretus.** L. Lat. In old English practice. The cap or coif of a judge or serjeant at law. *Spelman*. A cap of linen or silk fitting close to the head, (*forma ipsius cranii*), mentioned by Fortescue as always worn by the justices while sitting in the king's court, being the first and principal badge of distinction with which serjeants at law were decorated at their creation. It was never laid aside, either by the justices or serjeants, so as entirely to uncover the head, even in the presence of royalty itself. *Fortesc. de laud. LL. Angl.* c. 50.

**BIS.** Lat. Twice.

*Bis petitum*; a thing twice demanded. *Cro. Jac.* 21.

*Bis idem exigi bona fides non patitur; et in satisfactionibus non permittitur amplius fieri quam semel factum est*; good faith does not suffer the same thing to be demanded twice; and in making satisfaction [for a debt or demand] it is not allowed to be done more than once. 9 *Co.* 53. A party is not allowed to receive more than one satisfaction for the same debt or demand. See *Bona fides*.

*Nemo debet bis vexari pro eadem causa.* No man ought to be twice vexed [troubled or harassed, as by a bailable suit,] for the same cause. 5 *Co.* 61. 1 *Tidd's Pr.* 174.

**BI-SCOT.** In old English law. A fine imposed for not repairing banks, ditches and causeways. *Blount. Whishaw*.

**BISHOP.** [Lat. *episcopus*.] In English ecclesiastical law. The chief of the clergy within a diocese, subordinate to the archbishop of the province, to whom he is sworn to pay due obedience. 3 *Steph. Com.* 65, and notes. He is styled the archbishop's *suffragan*, or assistant. *Id.* 63, note (i) *Co. Litt.* 94 a. *Hargr. note* 96. In the common law he is generally called the *ordinary*. 1 *Chitt. Bl. Com.* 383, note. His dignity is usually called a *see*, (*sedes*), and his church a cathedral. 3 *Steph. Com.* 65.

**BISHOPRIC.** In ecclesiastical law. The diocese of a bishop, or the circuit in which he has jurisdiction; the office of a bishop. 1 *Bl. Com.* 377—382.

**BISSEXTILE.** [Lat. *bissextilis*, from *bis*, twice, and *sextilis*, the sixth.] Leap year is so called because in the Roman calendar, from which it is derived, the sixth day before the calends of March, (called *sexto calendas Martii*), was twice reckoned, viz. on the 24th and 25th of February, (or

rather, the 24th was reckoned twice,) in every fourth year, making such year properly to consist of 366 days. *Cowell. Blount. 2 Bl. Com.* 141. The same object is now attained by adding a day at the end of the month of February. *Brande.*

By the statute *De anno bissextili*, 21 Hen. III. it was enacted that the increasing day (*dies excrecens*) in the leap year, and the day next before, shall be accounted but one day. *Termes de la ley.* This is still the law, and a similar provision has been expressly enacted in some of the United States. 1 *N. Y. Rev. St.* [606], 615, § 3. Bracton devotes a considerable space in his tract "On Essoins," to the explanation of the bissextile year, which he calls the greater (*annus major*), as distinguished from the lesser or usual year. *Bract. lib. 5, tr. 2, c. 13, fol. 359.*

**BISSEXTUS.** Lat. [from *bis*, twice, and *sextus*, sixth.] In old English law. The added, repeated or increasing day (*dies excrecens*), of a leap year; in the Roman calendar, the sixth day before the calends of March, twice computed. It was made up of the odd hours and minutes over 365 days, which had been disregarded in the three preceding years, in addition to those of the fourth year, (*ex minutis quatuor annorum*.) *Bract. fol. 359 b.*

**BLACK ACT.** In English law. The statute of 9 Geo. I. c. 22; so called from the circumstance of its passage having been occasioned by some devastations committed near Waltham, in Hampshire, by persons in disguise, or with their faces blacked. 4 *Bl. Com.* 245. Repealed by statute 7 & 8 Geo. IV. c. 27. 4 *Steph. Com.* 174, note (a).

**BLACK BOOK OF THE ADMIRALTY.** In English law. An ancient repository of admiralty law, containing besides the laws of Oleron at large, a view of the crimes and offences cognizable in the admiralty; and also occasional ordinances and commentaries on matters of prize and maritime torts, injuries and contracts. It is generally agreed to have been originally compiled in the reign of Edward III., though it contains considerable additions of later periods. It has always been deemed of the highest authority in matters concerning the admiralty. Story, J., 2 *Gallison's R.* 404. *Id.* 1 *Sumner's R.* 555. *Molloy de Jur. Mar.* 104.

**BLACK BOOK OF THE EXCHEQUER.** [L. Lat. *Liber niger scaccarii*.]

In English law. An ancient book in the Exchequer, containing a miscellaneous collection of charters, treaties, conventions, the number of hides of land in several counties, escuages, and the like. It is commonly attributed to Gervase of Tilbury. 1 *Reeves' Hist. Eng. Law*, 220, note. The Red book of the Exchequer (q. v.) is a record of similar character. *Id. ibid.*

**BLACK BOOK OF HEREFORD.** In English law. An old record frequently referred to by Cowell and other early writers.

**BLACK MAIL.** A rent or tribute formerly paid by the poorer inhabitants of some of the northern counties of England to some powerful Scottish border chieftain (*potenti alicui Scoto limitaneo*), in order to be protected from the depredations of the Scottish border thieves, rievvers or moss troopers. *Spelman.* Protection-rent, or protection money. *Scott's Minstrelsy of Scott. Border*, Introd. Sometimes paid to the rievvers themselves. *Ersk. Inst. b. 4, tit. 4, § 64.*

The word *mail* in this compound is derived by some from the Fr. *maille*, a link of mail, or small piece of money. There is better reason, however, for regarding it as a Scotch term, signifying a *rent*, or stated payment, which sense it has in the Scotch *burrow meals*, or *burrow-mealis*, (borough rents.) See *Burrow-mealis*. This makes the whole word synonymous with *black rent*, in which sense it is used in the old books. *Stat. 9 Edw. III. c. 4. Blount.* It was called *black mail* from its being generally paid in baser money or in provisions, (*cere vel opsoniis*), instead of silver. *Spelman. Termes de la ley.*

**BLACK RENTS.** [L. Lat. *redditus nigri*.] In old English law. Rents reserved in work, grain, provisions, or baser money, in contradistinction to those which were reserved in *white* money or silver; which were termed white rents, (*redditus albi*), or blanch farms. *Tomlins. Whishaw.* See *Blanch farms*.

**BLADA**, plur. of *Bladum*. L. Lat. [L. Fr. *blees*.] In old English law. Corn or grain growing, (*segetes in herba*); growing crops of grain. *Spelman. 2 Inst.* 81. *Glanv. lib. 2, c. 3. Bract. fol. 96, 222 b, 223 b. Blada nondum a solo separata*; crops not yet severed from the soil. *Id. fol. 217 b. Quare blada, et germina vinearum—conculcavit, &c.*; wherefore he trod

down the crops and germins of vines, &c. *Reg. Orig.* 95. According to Lord Coke, *blada* is taken for all manner of corn or grain, or things annual, coming by the industry of man, as hemp, flax, &c. *2 Inst.* 81.

Grain after it has been harvested, or severed from the soil, (*blada a solo separata.*) *Bract.* fol. 217 b. *Blada in garbis*; grain in swathes or straw. *Reg. Orig.* 94 b, 96. See *Bladum*.

**BLADARIUS.** L. Lat. [from *blada* or *bladum*, qq. v.] In old English law. A corn monger; mealman or cornchandler; a bladier, or engrosser of corn or grain. *Blount.* *2 Inst.* 81.

**BLADIER.** See *Bladarius*.

**BLADUM**, pl. *Blada*. L. Lat. [Sax. *blæd*; L. Fr. *bled*, *ble*.] In old English law. Corn or grain; especially a growing crop. *Spelman.* *Bract.* fol. 223 b, 300 b.

Grain cut, or harvested. *Una mensura bladi*; one measure of grain. *Magna Charta*, c. 25. The plural *blada* (q. v.) is the more common form of this word.

**BLANCH FERME**, *Blanch ferme*, *Blanch firme*, *Blanch farm*. [L. Lat. *alba firma*, *firma blanca*.] In old English law. White farm, or white rent, (*redditus albus*); rent paid in silver and not in cattle. *Spelman*, voc. *Firma alba*. Rents reserved in silver, or white money, were anciently called *white rents*, *blanch farms*, *redditus albi*; in contradistinction to rents reserved in work, grain, or baser money, which were called *redditus nigri*, or *black-mail*. *2 Bl. Com.* 42. *2 Inst.* 44. See *Alba firma*, *Farm*.

**BLANCH (or BLENCH) HOLDING.** In Scotch law. A kind of tenure in which the vassal paid a small duty to the superior in full of all services, as an acknowledgment of his right, either in money, or in some other substance; as a penny money, a pair of gilt spurs, a pound of wax, or of pepper, &c., *nomine albæ firmæ* (in the name of white farm.) *Ersk. Inst.* b. 2, tit. 4, § 7. Considered by Blackstone the same with the *blanch farms* of the English law. *2 Bl. Com.* 42, note (d). See *Blanch ferme*.

**BLANC**, *Blank*. [L. Lat. *blanca*.] In old English law. A silver coin, of the value of 8d., coined in France by Henry V. in the eighth year of his reign; called *blanc* (*white*), to distinguish it from a gold coin called a *salut*, or *salus*, struck about the same time. *Spelman.* *Stow's Annals*, 586.

Money paid by weight, and not by tale. *Spelman.* See *Blancus*.

**BLANCUS.** L. Lat. [from Fr. *blanc*, *white*.] In old law and practice. White, as paper or parchment is, where there is no writing or other mark upon it; otherwise called *albus*. See *Album breve*. Hence the modern term *blank*.

Plain or smooth, as silver money that has no impression, or from which the impression has been worn.\* *Solidi blanci*; blank or plain shillings. *3 Mon. Ang.* 352. *Triginta lib. sterlingorum blancorum*; thirty pounds of blank sterling. *2 Id.* 31. This was undoubtedly a kind of silver money that was paid by weight, and not by tale, or count, (*quod vel ad ponderis valorem persolutum est, vel non in pecuniis numeratis.*) *Spelman*, voc. *Blanca*. Whether *blancus* denotes that this money was uncoined, or that it was coined money worn smooth, does not clearly appear. The words *blanc* and *blank* occur in English dictionaries in the sense of a piece of metal in the mint ready for coining. *Bailey's Dict.*

**BLANK.** [L. Lat. *blancus*.] A void space in writing; a part of a deed, record, or other instrument not written upon, or filled up. See *Blancus*.

**BLANK BAR.** In pleading. The old name of a plea in bar, put in in an action of trespass, to oblige the plaintiff to assign the certain place where the trespass was committed; otherwise called *common bar*. *Cro. Jac.* 594. *Blount*. It was chiefly used by the practisers in the Common Bench. *Id.*

**BLANK INDORSEMENT.** The indorsement of a bill of exchange or promissory note, by merely writing the name of the indorser, without mentioning any person to whom the bill or note is to be paid; called *blank*, because a *blank* or space is left over it for the insertion of the name of the indorsee, or of any subsequent holder. Otherwise called an indorsement *in blank*. *3 Kent's Com.* 89. *Story on Prom. Notes*, § 138. See *Indorsement*.

**BLASPHEMY.** [Lat. *blasphemia*, from Gr. *βλασφημία*, evil speaking or reviling.] In criminal law. An offence against religion, either by denying the being or providence of God; or by contumelious reproaches of our Saviour Christ; or by profane scoffing at the holy scripture, or exposing it to contempt and ridicule; Christianity being part of the laws of England.\* *4 Bl. Com.* 59. *4 Steph. Com.* 233, 234. *2 Hume on Crimes*, 558.

In the United States, also, the Christian religion is received as part of the common



law, and to revile it publicly and blasphemously, or to blaspheme its author is an indictable offence. 8 *Johns. R.* 290. *Thacher's Crim. Cas.* 346. 11 *Serg. & Rawle.* 394. Story, J., 2 *Howard's R.* 127, 198. *Wharton's Am. Crim. Law*, 4, 536. 20 *Pick. R.* 208. Shaw, C. J., *Id.* 213.

The use of this word is, in modern law, exclusively confined to sacred subjects; but *blasphemia* and *blasphemare* were anciently used to signify the reviling by one person of another. *Nov.* 77, c. 1, § 1. *Spelman.*

**BLED**, *Ble.* L. Fr. Corn or grain. *Litt. sect.* 68.

**BLENCH**, *Blench Holding.* See *Blanch Holding.*

**BLOCKADE.** In international law. The investment of a seaport by a competent naval force, with the view of cutting off all communication of commerce.\* 1 *Kent's Com.* 144—146. A sort of circumvallation round a place by which all foreign connexion and correspondence is, as far as human power can effect it, to be cut off. Sir Wm. Scott, (Vrow Judith,) 1 *Rob. Adm. R.* 126. It is not necessary, however, that the place should be invested by land as well as by sea, in order to constitute a legal blockade; and if a place be blockaded by sea only, it is no violation of belligerent rights for the neutral to carry on commerce with it by inland communications. 1 *Kent's Com.* 147.

**BLODWITA.** See *Bloodwit.*

**BLOOD.** [Lat. *sanguis*; L. Fr. *sanke.*] Kindred; relation by natural descent from a common ancestor; consanguinity. *Webster.* A person is said to be of the blood of another, when he is descended from, or collaterally related to him. See *infra.*

A person or persons so related; as the whole blood, the half blood, (qq. v.)

*Blood*, in American law, includes the half blood as well as the whole blood. 2 *Peters' R.* 58. A person is with the most strict propriety of language affirmed to be of the blood of another, who has any, however small a portion of the same blood, derived from a common ancestor. Story, J., *Id.* 87.

Mr. Justice Story observed in the case last referred to, that the word *blood* was used in the same sense in the English common law. There are passages, however, in which it seems to be used in the stricter sense, implying whole blood exclusively. See 2 *Chitt. Bl. Com.* 227. *Id.* 220, note. This was before the late statute 3 & 4 Will.

IV. c. 106. 1 *Steph. Com.* 385, 387. See *Half blood, Whole blood.*

**BLOODWIT**, *Blodwite.* [L. Lat. *blod-wita, blotwyta*; from Sax. *blod*, blood, and *wite*, an amercement.] In Saxon law. An amercement for bloodshed, (*multa effusi sanguinis.*) *Spelman.* Called by Scotch writers *bluidveit.* *Skene de Verb. Signif.* A customary fine paid as a composition and atonement for the shedding or drawing blood. *Cowell.* To have *bloodwit*, in old charters, was to have the privilege of taking cognizance of the crime, and of receiving the fines resulting from it. *Spelman*, voc. *Blodwita.*

**BLOODY HAND.** In forest law. The having the hands or other parts bloody, which, in a person caught trespassing in the forest against venison was one of the four kinds of circumstantial evidence of his having killed deer; although he was not found in the act of chasing or hunting. *Manwood.* *Cowell.* See *Backbear.* This corresponds with the phrase in the Scotch law, *red hand.* *Blount.*

**BOAT**, held not to be a ship or vessel. 5 *Mason's R.* 120, 232.

**BOC.** Sax. A book, or writing; a deed or charter. *Boc land*, (q. v.); deed or charter land. *Land boc*; a writing for conveying land; a deed or charter; a land-book. See *Land boc.*

**BOCERAS.** Sax. A scribe, notary or chancellor among the Saxons. *Crabb's Hist. Eng. Law*, 28.

**BOC HORDE.** Sax. [*quasi bookhoard.*] A place where books, writings or evidences were kept. *Cowell.*

**BOC LAND.** Sax. [*quasi book-land*; L. Lat. *terra libraria* or *hæreditaria.*] In Saxon law. Land held and conveyed by writing, *boc*, deed or charter; deed land, or charter land, so called to distinguish it from *folc land*, which was held without writing. *Spelman.* *Cowell.* 1 *Reeves' Hist. Eng. Law*, 5. 4 *Kent's Com.* 441, 442. Land severed from the folc land, and converted into an estate of perpetual inheritance.

According to Sir W. Blackstone, it was land held by deed under certain rents and services, and in effect differed nothing from the free socage lands. 2 *Bl. Com.* 90. And *Spelman*, in explaining the epithet *hæreditaria*, observes that it could neither be given away nor sold, but was to be left

strictly to the heirs, (*nec dari licuit nec vendi, sed hæredibus relinquenda erat.*) Later researches, however, have established the fact that *boc land* was in its nature *allodial*, and that the owner of it, unless fettered by some restriction imposed by those under whom he claimed, had the absolute power of alienation and disposition by gift and sale, and by will. *Somner, Gavelk.* 88, 89. *Allen's Royal Prerog.* 139, *et passim.* 1 *Spence's Chancery*, 20, 21. See *Folcland*.

**BODY.** See *Corpus*.

**BODY OF A COUNTY.** See *Corpus comitatus*.

**BODY CORPORATE, (or INCORPORATE.)** [L. Lat. *corpus corporatum*.] A corporation; so called because the persons composing it are made into a *body*. *Co. Litt.* 250 a. Said to be the most correct as well as the earliest name of a corporation in English law. *P. Cyclopædia*, voc. *Corporation*.

**BODY POLITIC.** A term applied to a corporation, which is usually designated as a *body corporate and politic*. A body to take in succession framed by *policy*. *Co. Litt.* 250 a. Particularly applied in the old books to a corporation sole. *Litt.* sect. 413. *Termes de la ley*, voc. *Corporation*, (*Bodies politic*.)

**BOILLOURIE, Boilary, Bullary.** [L. Lat. *salina*.] In old English law. A salt house or salt pit, where salt is *boiled*. *Co. Litt.* 4 b. *Cro. Jac.* 150.

**BOIS, Boys, Boyes.** L. Fr. [L. Lat. *boscus*, q. v.] Wood. *Haut bois*; high wood. *Sub bois*; under-wood, or coppice. *Cowell*, voc. *Boscus*.

**BOLTING.** [from Sax. *bolt*, a house.] In English practice. A term formerly used in the English inns of court, but more particularly at Gray's Inn, signifying the private arguing of cases, as distinguished from *mooting*, which was a more formal and public mode of argument. *Cowell. Tomlins. Holthouse*.

**BOMBARDA.** L. Lat. [from *bombus*, Gr. *βουφος*, the sound of the discharge.] In old law. A gun or cannon. *Spelman. Bombardius*; a gunner. *Towns. Pl.* 214.

**BONA.** Lat. [plur. of *bonum*, not used; Fr. *biens*.] Goods; personal chat-

tels; moveable property. A term still used in modern law, as in the phrase *nulla bona*, (q. v.) and others. Like *biens*, it is said to be a more comprehensive term than *goods*, as it comprehends chattels *real*, as well as personal. *Co. Litt.* 118 b. *Bona et catalla*; goods and chattels. This expression includes all personal things that belong to a man. *Pollock, C. B.*, 16 *Mees. & W.* 68.

In the civil law, *bona* includes all sorts of property, moveable and immoveable. *Story's Conf. Laws*, § 375. *Dig.* 50. 16. 49. 208. The Roman jurists derived *bona* from *beare, beatum facere*, to make happy, to benefit. *Id.* 50. 16. 49.

**BONA CONFISCATA.** Lat. In the civil law. Confiscated goods. Goods forfeited for offences were so called, because they belonged to the *fiscus*, or imperial treasury. 1 *Bl. Com.* 299. See *Fiscus*.

**BONA FELONUM.** Lat. In English law. Goods of felons; the goods of one convicted of felony. 5 *Co.* 110.

**BONA FUGITIVORUM.** Lat. In English law. Goods of fugitives; the proper goods of him who flies for felony. 5 *Co.* 109 b.

**BONA MOBILIA.** Lat. In the civil law. Moveable goods or personal chattels, as distinguished from *bona immobilia*.

**BONA NOTABILIA.** L. Lat. In English ecclesiastical law. Notable goods; goods worthy of notice, or of sufficient value to be taken into account.\* Goods of a party deceased, amounting in value, at least to five pounds.—If all the goods of the deceased lie, at the time of his death, within the same diocese or jurisdiction, a probate before the ordinary, or an administration granted by him are the only proper ones. But if the deceased had *bona notabilia*, or chattels to the value of a hundred shillings in two distinct dioceses or jurisdictions, then the will must be proved or administration taken out before the metropolitan of the province, by way of special prerogative. 2 *Bl. Com.* 509. *Shep. Touch.* 499, 500, and note. 2 *Steph. Com.* 237, 238. 1 *Chitt. Gen. Pr.* 523.

**BONA PERITURA.** Lat. Perishable goods.

**BONA VACANTIA.** Lat. [*vacantia*, from *vacare*, to be empty, to want.] In the civil and common law. Goods wanting an owner; goods without an owner, or in which no one claims a property. *Inst.* 2.

6. 4. These, by the general rule of the common law belong to the first finder, with the exception of royal fish, shipwrecks, treasure trove, waifs and estrays, which in England are the property of the sovereign. 1 *Bl. Com.* 298. 2 *Steph. Com.* 553, 554.

**BONA WAVIATA.** L. Lat. In English law. Waived goods; goods stolen, and waived, that is, thrown away by the thief in his flight, for fear of being apprehended, or to facilitate his escape; and which go to the sovereign. 5 *Co.* 109 b. 1 *Bl. Com.* 296. See *Waviare*.

**BONA FIDES.** Lat. In the civil and common law. Good faith, honesty, sincerity. See *Bona fide*.

**Bona fides non patitur ut bis idem exigatur.** Good faith does not suffer the same thing to be demanded twice. *Dig.* 50. 17. 57.

**BONA FIDE.** Lat. [abl. of *bona fides*, q. v.] In good faith; honestly, without fraud, collusion, or deceit: really, actually, without pretence.

This very common term, with the less frequent *bonæ fidei*, and *bona fides* from which both are formed, are derived from the civil law. *Inst.* 2. 6. pr. 1, 2. *Id.* 2. 8. 2. *Id.* 2. 9. pr. 5, 6. See *Bonæ fidei*.

**BONÆ FIDEI.** Lat. [gen. of *bona fides*, q. v.] In the civil law. Of good faith; in good faith. This is a more frequent form than *bonâ fide*, occurring in the phrases *bonæ fidei* actions, *bonæ fidei* contracts, *bonæ fidei* emptor, *bonæ fidei* possessor, (qq. v.)

**BONÆ FIDEI ACTION.** See *Actio bonæ fidei*.

**BONÆ FIDEI CONTRACTS.** Those in which equity may interpose to correct inequalities, and to adjust all matters according to the plain intention of the parties. 1 *Kames' Equity*, 200.

**BONÆ FIDEI EMPTOR.** A purchaser in good faith. One who either was ignorant that the thing he bought belonged to another, or supposed that the seller had a right to sell it. *Dig.* 50. 16. 109.

**BONÆ FIDEI POSSESSOR.** A possessor in good faith. One who believes that no other person has a better right to the possession than himself. 1 *Mackeld. Civ. Law*, 244, § 234. *Bonæ fidei possessor in id tantum quod ad se pervenerit tenetur*; a *bona fide*

possessor is bound for that only which has come to him. 2 *Inst.* 285.

**BONÆ MEMORIÆ.** L. Lat. Of good memory. *Bract.* fol. 14 b. Generally associated with the phrase *sanæ mentis*, (of sound mind.) *Id. ibid.*

**BONA GESTURA.** L. Lat. [*gestura*, from *gerere*, to bear.] In old English law. Good abearing, or good behavior. *Jacob. Whishaw*. See *Abearing*.

**BONA PATRIA.** L. Lat. In Scotch law. The good country; good men of the country; good neighbors. A name given to an assise or jury. *Skene de Verb. Signif.* *Cowell. Whishaw*. See *Boni homines, Patria*.

**BOND.** [Lat. *obligatio, scriptum obligatorium*.] A deed or instrument under seal, by which a person binds or obliges [*obligat*] himself, his heirs, executors and administrators, to pay a certain sum of money to another. The party thus binding himself is called the *obligor*, the party to whom he is bound, the *obligee*, and the instrument itself an *obligation* or writing obligatory. There is a *condition* usually, (and indeed in practice, invariably) added to the bond, that if the obligor does some particular act, the obligation shall be void, or else shall remain in full force.\* 2 *Bl. Com.* 340. 2 *Steph. Com.* 157. The sum mentioned in the obligatory part of the bond is termed the *penalty*, and is usually fixed at some high amount, much more than sufficient to cover any possible damage arising from non-observance of the condition. 2 *Steph. Com. ub. sup.* In money bonds it is always fixed at double the amount intended to be secured.

All the definitions in the books describe a bond as a deed, or instrument *under seal*, and *sealing* has always been held to be a necessary requisite to its validity. *Com. Dig.* Obligation, (A). *Fait*, (A. 2.) *Kent, C. J.*, 5 *Johns. R.* 239, 244. The term *bond*, *ex vi termini*, imports a *sealed* instrument. *Harper*, 434. 2 *Serg. & R.* 502. 6 *Vermont R.* 90. 1 *Blackf.* 241. *U. S. Digest*, Bond, I. 1. But a bond without a seal was recently held good by the supreme court of the United States. 15 *Peters' R.* 290, 315.

**BOND TENANTS.** In English law. Copyholders and customary tenants are sometimes so called. 2 *Bl. Com.* 148.

**BONES GENTS.** L. Fr. In old Eng-

lish law. Good men (of the jury). *Mirr.* c. 1, § 3. 9 *Co. pref.*

**BONI HOMINES.** L. Lat. [L. Fr. *bonas gentes, notables.*] In old European law. Good men; a name given in early European jurisprudence to the tenants of the lord, who judged each other in the lord's courts. 3 *Bl. Com.* 349. Blackstone, speaking of the origin of juries, says that all the nations which adopted the feudal system, as Germany, France and Italy, had a tribunal composed of twelve good men and true (*boni homines*), usually the vassals or tenants of the lord, being the equals or peers of the parties litigant. *Id. ibid. Esprit des Lois*, liv. 30, c. 18. This term has survived in the courts, to the present day. See *Good men*.

**Boni judicis est ampliare jurisdictionem.**

It is the part of a good judge to enlarge (or use liberally) his remedial authority. *Chanc. Prec.* 329. Wright, J., 1 *Wils.* 284. Wilmot, C. J., 2 *Id.* 350. It is the duty of a court to enlarge the legal remedy, if necessary, (without usurping jurisdiction,) in order to attain the justice of the case. *Broom's Max.* 36. See *Ampliare*.

**Boni judicis est judicium sine dilatione mandare executioni.** It is the duty of a good judge to cause judgment to be executed without delay. *Co. Litt.* 289.

**Boni judicis est lites dirimere.** It is the duty of a good judge to put an end or stop to lawsuits; [to discourage litigation]. 4 *Co.* 15. **Boni judicis est lites dirimere, ne lites ex lite oriatur.** It is the duty of a good judge to put an end to litigation, that suit may not grow out of suit. 5 *Co.* 31 a. **Boni judicis est causas litium dirimere.** It is the duty of a good judge to remove the causes of litigation. 2 *Inst.* 304. Legal remedies should be so applied as at once to put an end to the grievance complained of, without giving occasion to new suits for the same matter.

**BONO ET MALO.** See *De bono et malo*.

**BONORUM POSSESSIO.** Lat. In the civil law. Possession of goods; called in Greek (*παραρρησια διαδοχη*), prætorian succession. The right of pursuing and retaining the property of a person deceased, not strictly due by the civil law, but granted by the prætor from a principle of equity. *Inst.* 3. 10. *Cooper's Notes, in loc. Heinec. Elem. Jur. Civ.* lib. 3, tit. 10, §§ 714, 715.

*Hallifax Anal.* b. 2, c. 11, n. 1. A species of succession resembling the modern right of administration. *Id.* n. 8.

**BONUM.** Lat. Goodness, virtue. This word is constantly associated with *æquum*, as in the phrase *ex æquo et bono*, (q. v.); though it is not always distinguished from it in signification.

A good, an advantage or benefit. See *infra*.

**Bonum defendentis ex integra causa; malum ex quolibet defectu.** The success of a defendant depends on a perfect case, his loss arises from some defect. 11 *Co.* 68.

**Bonum necessarium extra terminos necessitatis non est bonum.** A good thing required by necessity is not good beyond the limits of such necessity. *Hob.* 144. A maxim applied to *commendams* in certain cases.

**Bonus judex secundum æquum et bonum judicat, et æquitatem stricto juri præfert.** A good judge judges (or decides) according to equity and virtue, and prefers equity to strict law. *Co. Litt.* 24 b. Buller, J., 4 *Term.* 344. *Broom's Max.* 37.

**BOOKLAND.** See *Bocland*.

**BOOK OF FIEFS.** See *Liber Feudorum*.

**BOOK OF RATES.** In English law. A table or tariff of duties or customs, sanctioned by the authority of parliament. 1 *Chitt. Bl. Com.* 316, and note.

**BOON DAYS.** In English law. A certain number of days in the year in which the tenants of copy hold lords performed base or corporal services for their lord, such as reaping or carrying his corn, tiling his houses, or thatching his barn, or ploughing his lands, &c. *Whishaw. Holthouse*.

**BOOT.** See *Bote*.

**BOOTING or BOTING CORN.** Certain rent corn, anciently so called. *Cowell. Blount*.

**BORD.** Sax. A house or cottage, a table. *Kennetts' Par. Ant. Spelman*, voc. *Bordarii*.

**BORDAGE.** [L. Lat. *bordagium*, from Sax. *bord*, a house, cottage or table.] In old English law. A species of base tenure, by which certain lands, (termed *bord lands*,) were anciently held in England, the tenants

being termed *bordarii*. *Cowell*, voc. *Bordagium*. *Blount*. See *Bordarii*, *Bordlands*.

**BORDARII**, *Bordimanni*. L. Lat. [from Sax. *bord*, or Fr. *borde*, a house or cottage; a table.] In old English law. Bordmen, bordars, or cottagers. One of the classes of tenants or agricultural occupiers of land mentioned in the Domesday Survey, and, with the exception of the *villani*, the largest. *Domesd. Titt. Norf. Middlesex, Gloucest. Huntedons*. The origin of their name, and the exact nature of their tenure have been variously interpreted.

Lord Coke, who makes the word of French origin, (Fr. *borde*, a cottage), defines *bordarii* to be "boors or husbandmen, (*bores*), holding a little house with some land of husbandry bigger than a cottage." *Co. Litt.* 5 b. According to others, they were cottagers merely. But Spelman remarks on this, that they are often found in Domesday as cultivating more land than the proper allotment of a *tugurium*, or cottage; and hence Lord Coke has properly explained their houses to be bigger than a cottage. According to Spelman, the most probable derivation of the term *bordarii* is either from Sax. *bord*, a table, as denoting those who cultivated the lands which the lord kept for the particular maintenance of his table, (termed *bord lands*, q. v.), or who supplied the lord with small provisions for his table; or from Sax. *bord*, a house, as denoting those tenants who performed servile offices about the lord's house (*domestica navantes servitia*), such as grinding corn, bringing in wood, drawing water, &c.; villeins being, according to Spelman, occupied in agricultural labors in the fields, (*villæ et agris addicti, rem colonicam exercebant*.) According to Bishop Kennett, the *bordarii* were distinct from the *servi* and *villani*, and seem to be those of a less servile condition, who had a *bord* or cottage, with a small parcel of land allowed to them, on condition they should supply the lord with poultry and eggs, and other small provisions for his board and entertainment. *Kennett's Gloss. Paroch. Ant.* From various passages of Domesday their condition appears to have been considerably above that of villenage, and Sir Henry Spelman seems inclined to the belief that they were actually freemen, though holding by base services.

**BORDHALFPENNY**, *Bordhalpenny*. [from Sax. *bord*, a table.] In old English law. Money paid at fairs and markets, for the privilege of setting up tables, boards

and stalls for the sale of wares. *Spelman*. *Cowell*. *Blount*.

**BORDIMANNI**. L. Lat. In old English law. Bordmen. *Spelman*, voc. *Bordarii*. Sometimes erroneously written *borduanni*. *Co. Litt.* 5 b. *Blount*. See *Bordarii*.

**BORDLANDS**. [from Sax. *bord*, a table.] In old English law. The demesne lands which lords reserved for the maintenance of their board (*bord*), or table; (*quod quis habet ad mensam suam*.) *Bract.* fol. 263. *Spelman*, voc. *Bordarii*. *Cowell*. See *Demesne lands*.

**BORDLODE**. [from Sax. *bord*, a house.] In old English law. The quantity of food or provisions (otherwise called *ferm*), which the *bordarii* or bordmen paid for their *bordland*. *Cowell*.

**BORDSERVICE**. A tenure of bordlands. *Blount*. See *Bordage*.

**BORG**, *Borh*, *Borhoe*. Sax. In Saxon law. A pledge, pledge giver, or surety, (Lat. *vas*, *fidejussor*.) The name given among the Saxons to the head of each family composing a tithing or decennary, each being the pledge for the good conduct of the others. *LL. Edw. Conf.* c. 32. *Spelman*, voc. *Borsholder*, *Burghbrech*. The word *bor* continues to be used at the present day in some parts of England, as in Norfolk, where it is employed as a common term of address by one person to another, in the sense of friend, neighbour, or companion. *Knight's P. Magazine*, 1846, vol. 2, p. 103.

The word *borg*, or *borh* also anciently denoted not only the pledge giver, but the pledge itself so given, (*fidejussio*, *plegium*.) *Spelman*, voc. *Burghbrech*. See *Friburg*, *Decennary*, *Tithing*.

**BORGHBRECH**, *Burghbrech*. [Sax. *borhbryce*, *borgbryce*, *borhbrece*, *borhibriche*; from *borh*, or *borg*, a pledge, and *bryce*, a breach.] In Saxon law. Breach or violation of pledge, (*fidejussionis violatio*;) pledge breach, (*plegii fractio*.) *Spelman*. The offence of violating the *borh*, or pledge given by the inhabitants of a tithing. See *Borg*.

**BORGESMON**, (otherwise *Friborgesman*.) Sax. [from *borg*, (q. v.) and *man*.] In Saxon law. The name given to the head of each family composing a tithing. *Gilb. C. Pleas*, *Introd. note*. *Spelman*, voc. *Friborga*. See *Borg*.

**BORGHIEALDER.** See *Borhealder*. Bracton writes it *borghye aldere*. *Bract.* fol. 124 b.

**BORHEALDER**, *Borghealder*, *Borghiealder*, *Borgiealder*, *Borhoealder*, corrupted into *Borowholder*; **BORHESEALDER**, corrupted into *Borsholder*, and *Bursholder*. Sax. [from *borh*, a pledge, and *alder*, elder or chief; Lat. *senior*, *princeps*, *capitalis*.] In Saxon, and old English law. The chief, head, or principal man of a *borg* or pledge, that is, a tithing, or decennary, (*fidejussionis princeps*, *decuriæ præfectus*;) a chief pledge, (*capitalis fidejussor*, *capitale plegium*.) *Spelman*, voc. *Borsholder*. *Termes de la ley*. *Bract.* fol. 124 b. Called also *borowhead*, or *head-borow*, (qq. v.) See *Borsholder*, *Decanus friborgi*.

**BORHOE**, (the same as *Borh*, or *Borg*.) Sax. A pledge. Corrupted into *borow*, *borough*, and *burrow*. *Spelman*, voc. *Borsholder*.

**BOROUGH**, *Borow*, *Burrough*, *Burgh*. [L. Lat. *burgus*; L. Fr. *burg*, *bourg*, *burgh*.] In English law. A word which has been variously defined; as

A town. *Co. Litt.* 108 b.

An ancient town. *Litt. sect.* 164. *Termes de la ley*.

A town of note or importance; a walled or fortified town. *Cowell*. See *Burgus*.

A corporate town that is not a city. *Cowell*.

An ancient town, holden of the king or any other lord, which sends burgesses to parliament. *Co. Litt.* 109 a.

A town, whether corporate or not, that sends burgesses or members to parliament. 1 *Bl. Com.* 114, 115.

A city, or other town, that sends burgesses to parliament. 1 *Steph. Com.* 116.

A corporate town, or city, whether sending members to parliament, or not. *English Munic. Corp. Act*, 5 & 6 Will. IV. c. 76.

A town or place organized for local government. *P. Cyclopædia*. See *Burgh*, *Burgus*, *Town*.

In American law, this word is not much used, and has not received any precise definition. In common speech it is generally employed to signify a town or village which has been *incorporated*; but it seems to be clearly distinguished from a city.

As to the etymology of this word, two opinions have been maintained by English writers. Some derive it from the Sax. *burg*, *burh*, *byrg*, *byryg*, Fr. *burg*, Lat. *burgus*; a place fortified or defended by a wall, mound

or other enclosure. *Termes de la ley*. *Spelman*, voc. *Burgus*. *Cowell*. See *Burgus*. The present meaning of the German *burg* (a castle, fort, citadel,) favors this etymology. Others derive it from the Sax. *borh*, *borhoe*, a pledge, tithing, or decennary. *Termes de la ley*. *Cowell*. This opinion is supported by the derivation of the word *town*. 1 *Bl. Com.* 114, 115. See *Town*.

The signification of the term *borough* has undergone considerable fluctuation, as will appear from the definitions above given. The quality of *not being a city* is prominently claimed for a borough by some of the best authors. *Cowell*. *Blount*. *Stat. 2 Edw.* III. c. 3, cited *ibid*. *Lyndwode Prov.* cited in *Cowell*. According to Lord Coke, "every city is a burgh, but every burgh is not a city." *Co. Litt.* 109 a. The latter branch of this proposition implies that some boroughs are cities, which goes to modify the older definitions. The former (every city is a burgh,) is censured by Mr. Hargrave, as not being quite accurate, and he instances Westminster, which is a borough not incorporate, and yet it is a city. *Co. Litt. Hargr.* Note 123, lib. 2. Again it is said by Littleton that "every borough is a town, but not *è converso*." *Litt. sect.* 171. The distinction between a borough (*burgus*), and a city is not sustained by *Spelman*, who enumerates, among the meanings of the word, a town and city both, and observes that the Anglo Saxons undoubtedly called those places *burghs*, which others called *cities*. (*Proculdubio Saxones nostri burgos nuncuparunt quas alii urbes et civitates*.) *Spelman*, voc. *Burgus*. He adds that when the cathedrals of bishops were prohibited by canon from being located elsewhere than in cities, the title of *city* was retained by those boroughs only which were distinguished by these erections (*civitates titulus apud cathedrarios tantum burgos remanebat*;) and hence there came to be reckoned no more cities than there were bishoprics. *Spelman*, *ibid*. See *City*. *Borough* may have been the generic name used in the old law, as including towns and cities. *Co. Litt.* 115 b. And yet boroughs are constantly mentioned in old statutes as distinct from both. *Et que nul city, borough, ne ville*, &c. *Stat. Westm.* 1, c. 6. As to the present use of the word, an eminent English writer, as we have seen, defines a borough to be "a city, or other town that sends burgesses to parliament." 1 *Steph. Com.* 116. And under the Municipal Corporation Act, 5 & 6 Will. IV. c. 76, boroughs seem to be placed on the footing of cities in all respects, being divided into wards, and governed by a mayor, aldermen and council. 3 *Steph.*

*Com.* 191, *et seq.* See 1 *Man. & Gr.* 1, note.

Another distinctive quality of a borough in English law is that of *sending burgesses* [or members] to parliament. *Co. Litt.* 109 a. This still continues to be the principal feature of a borough, and is accordingly retained in the best modern definitions. 1 *Bl. Com.* 114, 115. 1 *Steph. Com.* 116. It has not been regarded, however, in the Municipal Corporation Act already cited. *Id. ibid.* note (i). The term *borough* is used in this act to signify a corporate town [i. e. a town organized for local government,] whether sending representatives to parliament or not; a sense which Mr. Stephen considers a novel one. 3 *Steph. Com.* 191, note (e).

**BOROUGH ENGLISH**, *Borow English*, *Burgh English*. [Sax. *borhoe englise*.] A particular custom prevailing in certain ancient English boroughs and copyhold manors, by which land descended to the youngest son instead of the eldest, or, if the owner had no issue, to his youngest brother. *Manv.* lib. 7, c. 3. *Litt.* sect. 165, 735. *Spelman*, voc. *Borow-English*. *Termes de la ley*. *Kitchin*, 102, cited *ibid.* *Cro. Jac.* 198. 2 *Bl. Com.* 83. 1 *Id.* 75. 1 *Crabb's Real Prop.* 593, § 749. It was so called because, as some hold, it was an English custom, as distinguished from those introduced by the Normans. 2 *Bl. Com.* 83. The reason given by Littleton for this custom is, because the youngest son, by reason of his tender age, is not so capable as the rest of his brethren to help himself. *Litt.* sect. 211. For other reasons, see 2 *Bl. Com.* *ub. supra*.

The custom of borough-English still prevails in several cities, and ancient boroughs, and districts of smaller or larger extent, adjoining to them in different parts of the kingdom. The land is held in socage, but according to the custom it descends to the youngest son, in exclusion of all the other children of the person dying seised. In some places, this peculiar rule of descent is confined to the case of children; in others, the custom extends to brothers and other male collaterals. *Third Real Property Report*, p. 8, cited in 1 *Steph. Com.* 199, note (n).

**BOROUGH-HEAD**, *Borow-head*. The chief man, or head of a borough. *Cowell*. See *Head borough*.

**BOROUGH-HOLDER**, *Borow-holder*. See *Borhealder*, *Borsholder*.

**BORSHOLDER**, *Bursholder*, [corrupted from the Sax. *borhesalder*, another form of *borhealder*, *borghiealder*, or *borhoealder*. *Spelman*. *Bract.* fol. 124 b. See *Borhealder*.] In English law. The head, chief or principal man of a *borh*, *borg*, borough, or tithing. 1 *Bl. Com.* 114, 355. 3 *Steph. Com.* 47. *Wilcock on Constables*, *Intro.*

**BOSCAGE**. Eng. and Fr. [L. Lat. *boscagium*, from *boscus*, Ital. *bosco*, a wood.] In English law. The food which wood and trees yield to cattle; browse-wood, mast, &c. *Spelman*, voc. *Boscagium*. *Cowell*.

An ancient duty of wind-fallen wood in the forest. *Manwood*. See *Cablish*.

**BOSCULUS**. L. Lat. [dimin. of *boscus*, a wood, q. v.] A little wood. 2 *Mon. Angl.* 239, 242. *Towns. Pl.* 57.

**BOSCUS**. L. Lat. [Ital. *bosco*, Flem. *bosc*, from Gr. *βόσκειν*, to feed; Fr. *bois*.] In old English law. Wood generally; all manner of wood. *Co. Litt.* 4 b. *Reg. Orig.* 1 b, 2. *Magna Charta*, c. 21. 2 *Inst.* 36. Wood growing; a wood, (*sylva*.) *Towns. Pl.* 23, 51, 195. *Stat. Merton*, c. 4. It was divided into high wood, (Fr. *haut-bois*,) or timber, (L. Lat. *mæremium*, *saltus*); and underwood or coppice, (*sub-boscus*; Fr. *sub-bois*.) *Spelman*, voc. *Boscagium*. *Cowell*. *Blount*.

**BOTE**, *Bota*, *Bot*, *Boot*. Sax. In Saxon law. A reparation, or making good of any damage done; (Lat. *emendatio*, *refectio*, *restauratio*.) *Spelman*. *Circ bota*, *burg bota*, *brug bota*, (qq. v.); the reparation of a church, town, or bridge. *Ibid.*

A compensation, amends, or recompense. *Lamb. Explic.* cited in *Cowell*. A satisfaction or composition paid under the Saxon laws, in expiation of an offence. *Spelman*. *Cowell*. *Co. Litt.* 127 a. *Man bote*, *mægbot*, *kins bot*, *frithes bot*, (qq. v.); satisfaction for the death of a vassal or kinsman, or for breach of the peace. *Spelman*.

In English law. An allowance; otherwise called *estover* or *estovers*, (qq. v.)

The word *bote* (sometimes written *boot*,) is of frequent occurrence in ancient English law, but usually in combination with other words, as above. It is still retained in English and American jurisprudence, as a component of the words *housebote*, *ploughbote*, *cartbote*, *hedgebote* and *firebote*, partly in its ancient sense of *reparation* or *replenishment*, and partly in the secondary or general sense of a sufficient *allowance*; being synonymous with the word *estovers*.\*

*Co. Litt.* 41 b. Thus, *housebote* signifies an allowance of wood to a tenant for the purpose of repairing his house, (*in ædium refectionem*;) *ploughbote* and *cartbote*, for making and repairing his instruments of husbandry; *haybote* or *hedgebote* for repairing his hedges; and *firebote*, for maintaining or replenishing his fire. *Spelman.* 2 *Bl. Com.* 35. 1 *Steph. Com.* 241. See *Cartbote, Firebote, Haybote, Housebote, Ploughbote.*

**BOTELESS.** In old English law. Without amends; without the privilege of making satisfaction for a crime by a pecuniary payment; without relief or remedy, (*sine remedio*.) *Cowell. Blount.* This word (written *bootless*), is still retained in ordinary language in the sense of vain, or fruitless. *Cowell.*

**BOTHA.** L. Lat. In old English law. A booth, stall, or tent to stand in, in fairs or markets. *Cowell. Blount.*

**BOTHAGIUM.** L. Lat. [from *botha*, q. v.] Boothage, or customary dues paid to the lord of the manor, for the pitching and standing of booths in a market or fair. *Kennett's Par. Ant.* 680, cited in *Cowell.*

**BOTTOMAGE.** L. Fr. Bottomry. *Ceo est bottomage, quant argent est borrow sur le keil del neif, et le neif oblige al payment de ceo, &c.*; bottomry is when money is borrowed upon the keel of a ship, and the ship is bound to the payment of it, &c. *Latch*, 252. See *Bottomry.*

**BOTTOMRY, Bottomary, Bottomree.** [Dutch *bomerie, bodemery*; Germ. *bodmeret*; L. Fr. *bottomage*; Fr. *contrat a la grosse aventure*; Lat. *fœnus nauticum, pecunia trajectitia*.] In maritime law. An agreement entered into by the owner of a ship, or [the master as] his agent, whereby, in consideration of a sum of money advanced for the use of the ship, the borrower undertakes to repay the same with interest, if the ship terminate her voyage successfully, and binds or hypothecates the ship for the performance of his contract. *Smith's Merc. Law*, 261. The instrument by which this is effected is usually in the shape of a bond, called a *bottomry bond*, which is in the nature of a mortgage of the vessel, and is defined by Mr. Justice Story to be "a contract for a loan of money on the bottom of the ship, at an extraordinary interest, upon maritime risks, to be borne by the lender, for a voyage, or for a definite period." 2 *Sumner's R.* 157, 186. *Smith's Merc.*

*Law, ub. sup.* 3 *Kent's Com.* 354. The money is loaned upon the ship, or ship and accruing freight, at an extraordinary interest, the risks of the voyage being borne by the lender, and the bond covers the freight of the voyage, or during the limited time. 3 *Kent's Com.* 354. *U. S. Digest*, Bottomry and Respondentia. 2 *Cond. Rep.* *U. S.* 129, note.

The term *bottomry* is thought to be of Dutch origin, (being termed in that language *bomerie, bodmerie, boddemerie*;) and to be derived from *boden*, or *bodem*, which in the same language signifies the bottom or keel of a ship. *P. Cyclopædia.* So *bodo*, or *bodun* signified, it is said, in old French and British, a bottom or depth. *Camden Brit.* 149. *Loccenius*, lib. 2, c. 4, § 1. *Molloy de Jur. Marit.* 359. It seems sufficient, however, to derive it, as an English word, from the bottom of a vessel, which is now used by a common figure, (*pars pro toto*;) as *keel (carina)*, was anciently, for the vessel itself. See *Bottomage.*

**BOUCHE, Bouch.** L. Fr. Mouth. *Ne gist en le bouche*; it does not lie in the mouth; i. e. it is not for one to say. *Litt.* sect. 58. A phrase still used. *En bouch del lay gents*; in the mouth of the common people. *Cro. Jac.* 700.

An allowance of provision. *Avoir bouche à court*; to have an allowance at court; to be in ordinary at court; to have meat and drink scot-free there. *Blount. Cowell.*

**BOUGHT AND SOLD NOTES.** Notes or memoranda of the purchase and sale of goods, made by the broker effecting it.\* When a broker is employed to buy and sell goods, he is accustomed to give to the buyer a note of the sale, commonly called a *sold note*; and to the seller a like note, commonly called a *bought note*, in his own name, as agent of each, and thereby they are respectively bound, if he has not exceeded his authority. *Story on Agency*, § 28.

**BOUND.** [L. Lat. *bunda*, q. v.] A limit, or enclosing line of lands. In the common phrase "metes and bounds," *metes* properly signify the angles, corners or turning points, and *bounds* the lines between; though practically little or no distinction is made between them. Dr. Webster distinguishes *bound* from *boundary*; defining the former to be a limit, and the latter a visible mark designating a limit; though he observes that they are also used synonymously.



**BOUND BAILIFFS.** In English law. Sheriff's officers are so called, from their being usually *bound* to the sheriff in an obligation with sureties, for the due execution of their office. 1 *Bl. Com.* 345, 346.

**BOURGESSOURS.** See *Burgessours*.

**BOVATA (or BOVATUS) TERRÆ.** L. Lat. [from *bos*, an ox; L. Fr. *love de terre*.] In old English law. An oxgang, or oxgate of land; as much as an ox could till, or go over, (*bovis iter*.) Co. Litt. 5 a. Reg. Orig. 2. *Spelman. Thel. Dig.* lib. 8, c. 13. *Shep. Touch.* 93. An ancient measure of land, of uncertain quantity. See *Oxgang*.

**B. R.** The initial letters of *Bancus Regis*, or *Bancus Regina*, the Latin name of the English Court of King's or Queen's Bench, frequently used in the old books and reports, to designate that court. The initials K. B. and Q. B. of the English words are now more commonly employed. See *Bancus Regis*, *Bancus Regina*.

**BRACE DE LA MEER.** L. Fr. An arm of the sea. *Britt.* c. 33.

**BRACEATORIUM.** L. Lat. In old English law. A place for brewing ale. *Bract.* fol. 207 b. See *Brasitorium*.

**BRACER.** L. Fr. To brew. *Kelham.* *Braceresses*; brewers. *Britt.* c. 30.

**BRACHIUM MARIS.** L. Lat. An arm of the sea. See *Arm of the sea*.

**BRACTEATOR.** L. Lat. A gold beater. *Towns. Pl.* 260.

**BRACTON.** A celebrated writer of the time of Henry III., whose treatise *De Legibus et Consuetudinibus Angliæ*, (of the laws and customs of England), is the most complete and valuable of the productions of that age on the subject of English jurisprudence. This great work is divided into five books, and these into tracts (*tractatus*), and chapters; embracing the whole civil and criminal law and practice of the kingdom, as it existed at the time it was written. The author, Henry de Bracton, was one of the king's justices, and is said by some to have been chief justice, by others a justice in eyre. 1 *Spence's Chancery*, 119, and note (a). The work itself is supposed to have been written or completed about A. D. 1270. *Id. ibid.* note (b). 2 *Reeves' Hist. Eng. Law*, 90. It was first published

in 1569, and a second edition in 1640; but neither of these is free from corruptions and imperfections of the text, which render the author's meaning occasionally obscure.

Bracton is called by Mr. Spence a doctor of the civil law, and is supposed to have been the same person with Henry de Bracton who delivered law lectures in the University of Oxford towards the middle of the thirteenth century. 1 *Spence's Chancery*, *ub. sup.* His intimate acquaintance with the Roman law sufficiently appears from the frequent references to the Code, Institutes and Pandects, scattered through his work, (in addition to large extracts without reference,) and which have led some to suppose it to have been almost entirely compiled from these sources. It was this feature which from an early period detracted so much from Bracton's authority in the common law courts of England. Thus we find him cited in Plowden, "not as an author in the law, but as an ornament to discourse where he agrees with the law." Saunders, C. B., arg. *Plowd.* 357. Catlin, C. J. arg. *Id.* 358. In later times, his merits were more adequately appreciated, and his authority acknowledged by eminent judges and writers, such as Staundford, Sir William Jones, Lord Holt and Selden. Lord Coke himself made free use of Bracton in all his writings, and a large proportion of the Latin quotations with which the Institutes abound is taken from this source. Sir William Blackstone also frequently refers to Bracton, and always in terms of peculiar respect. Bracton continues to be cited by the best writers on English and American law, and is sometimes quoted in argument in the English courts. 15 *Mees. & W.* 60.

Although most of the treatise *De legibus et consuetudinibus Angliæ* has necessarily become obsolete, it will probably never lose its interest as the most complete repository of ancient English jurisprudence, and a principal source of the learning of later times. 1 *Kent's Com.* 499—501. Indeed, of late years, the attention of English jurists, especially the civilians, has been drawn to it in a very particular manner. Mr. Long, in a "Discourse" recently delivered in Middle Temple Hall (and published in the Law Library, new series, vol. 44,) goes into an examination of a considerable part of "this comprehensive Institutional Treatise," as he terms it, and observes of it, (p. 106,) "this book is certainly the foundation of our system." Mr. Spence, in his valuable treatise on *The Equitable Jurisdiction of the Court of Chancery*, has made very copious use of it in illustration

of what may be considered his theory of the almost entire derivation of the English from the Roman law. Not a few portions of Bracton continue to be law in the United States at this day.

The great interest with which this venerable work is invested arises from the circumstance of its having been written at the time when the common law was in process of formation. Bracton himself expressly speaks of the law as then *unwritten*, and made up of customs which often differed in different places. *Sola Anglia usa est in suis finibus jure non scripto et consuetudine.* \* \* *Sunt in Anglia consuetudines plures et diversæ, secundum diversitatem locorum.* Bract. fol. 1. These discordant materials were however beginning to be amalgamated and reduced to uniformity, principally from the effect of the decisions of the King's courts, which are here referred to systematically for the first time. Nearly five hundred references are made to adjudged cases of this description, some of them before the King, others in the Bench, but most of them before the justices in eyre, especially before Martin de Pateshull, whose opinions seem to be regarded as of paramount authority.

This work of Bracton, like the older treatise of Glanville, and the productions of the contemporary French writers Defontaines and Beaumanoir, is not only a treatise on the doctrines or *principles* of the law, but also, and to a very considerable extent, an exposition of the *mode of conducting actions* and other proceedings in the courts; or what would be called in modern times, a *book of practice*. It abounds in forms, especially of writs, which are given at length, with all the rules of procedure, and with such minuteness as prove the author to have been fully acquainted with the details of the subject.

The extent to which Bracton drew his materials from the civil law, is a question upon which very different opinions have been entertained, and which, from the important bearing recently given to it, upon the origin and composition of the common law itself, has assumed a high degree of interest. It was said by Mr. Reeves, (a very competent judge, as has always been supposed,) in his *History of the English Law*, that what Bracton took from the Roman law, "if put together, would perhaps not fill three whole pages of his book." 2 *Reeves' Hist. E. L.* 88. This opinion has been warmly controverted by the English civilians, and particularly, of late, by Mr. Long and Mr. Spence, in the works already referred to, from whose representations the very opposite conclusion might be drawn,

that the treatise *De legibus et consuetudinibus Angliæ* was little more, in substance, than a compilation of Roman jurisprudence adapted to, and incorporating the English law and practice of the time. The assertion of Mr. Reeves may be safely questioned without by any means admitting such a conclusion as this. The free use made by Bracton of the civil law at the very commencement of his treatise, (whole passages being given verbatim, and without any indication of the sources from which they are derived,) and the adoption, to some extent, of the arrangement of the Institutes, have undoubtedly imparted to the whole work very much of a Roman air and exterior; but a careful examination will show (it is believed) that it has been compiled essentially from other sources. Those portions in which the civil law has been either referred to, or used without reference, are principally confined to the first book, less than half of the second, and the first tract of the third, comprising together about one-eighth of the whole treatise; and much of the matter thus borrowed seems to have been introduced rather for the purpose of filling up the outline of a great work, than of giving what was supposed to be the admitted law of England. More will be said on this subject, under the heads of the *Common and Civil Law*.

The style of Bracton, when not obscured by corruptions of the text, is remarkably clear and simple, affording a complete contrast to the harsh and involved manner of writers far more modern, and admitting generally of very literal translation.

**BRANDING.** In criminal law. The punishment of marking convicted felons with a hot iron (in the shape of a letter or otherwise) on the hand or face. Burning in the hand (q. v.) on the allowance of clergy, was a species of branding. 4 *Bl. Com.* 368, 370.

**BRASIARE.** L. Lat. [L. Fr. *bracer*; from *brasium*, malt.] In old English law. To brew. *Domesday. Blount.*

*Brasiator, braciator*; a maltster; a brewer. *Reg. Orig.* 280. *Spelman*, voc. *Brasium. Brasiatrix*; a female brewer. *Cowell. Blount.*

*Brasina, bracina*; a brew-house. *Cowell. Blount.*

*Brasitorium, braceatorium*; a malt-house. *Towns. Pl.* 184.

**BRASIUM, Brassum.** L. Lat. [from Gr. *βρασσω*, to boil.] In old English law. Malt. *Spelman. Reg. Orig.* 111, 127.

**BREACH.** [Lat. *fractio, infractio, violatio.*] The breaking or violating of a law, right or duty, either by commission or omission. See *infra*.

The breaking, or forcibly passing through, or over a material object. See *infra*.

**BREACH OF CLOSE.** The unlawful, or unwarrantable entry on another person's soil, land or close. 3 *Bl. Com.* 209, 210. See *Close, Quare clausum fregit, Trespass.*

**BREACH OF COVENANT.** The non-performance of any covenant agreed to be performed, or the doing of any act covenanted not to be done. *Holthouse.* 3 *Bl. Com.* 155, 156.

**BREACH OF PEACE.** The offence of breaking or disturbing the public peace by any riotous, forcible or unlawful proceeding. 4 *Bl. Com.* 142, *et seq.* 4 *Steph. Com.* 273, *et seq.*

**BREACH OF POUND.** The breaking any pound or place where cattle or goods distrained are deposited, in order to take them back. 3 *Bl. Com.* 146. See *Pound breach.*

**BREACH OF PRISON.** The offence of actually and forcibly breaking a prison or gaol, with intent to escape. 4 *Chitt. Bl. Com.* 130, notes. 4 *Steph. Com.* 255.

**BREACH.** In pleading. That part of the declaration immediately preceding the *ad damnum* clause, in which the violation of the defendant's contract is stated. 1 *Chitt. Pl.* 332, 374.

**BREAKING.** In the law of burglary. A substantial and forcible irruption, as by breaking or taking out the glass of a window, or otherwise opening it; picking a lock, or opening it with a key; lifting up the latch of a door, or unloosening any other fastening which the owner has provided. 4 *Bl. Com.* 226. 4 *Steph. Com.* 149, 150, and note (x) *ibid.* *Coze's R.* 439. And whatever would be a breaking of an outer door will also be a breaking open of an inner door, to constitute burglary. 2 *East's P. C.* 488.

There must, in general, be an actual breaking, and not a mere legal *clausum fregit*, (by leaping over invisible ideal boundaries, which may constitute a civil trespass;) and therefore an entry by an open door or window is, in itself, no burglary. 4 *Bl. Com.* 226. 7 *Dane's Abr.* 136. But there may be a breaking by implication, where there is a felonious entry; both

breaking and entering being always essential to complete the offence of burglary. 4 *Bl. Com.* 226, 227. *U. S. Digest*, Burglary. See *Entry*.

**BRECCA.** L. Lat. In old English law. A breach, or decay, or any other want of repair. *Pat. 16 Ric. II.* cited in *Cowell*.

**BRED.** An old English word used by Bracton as part of the phrase *To lange and to bred*, which is very oddly translated by Cowell and others, *too long and too broad.* *Bract. fol.* 135. The context of the passage obviously requires quite a different interpretation. See *To lange and to bred*.

**BREDWITE.** Sax. [from *bred*, and *wite*, a fine or penalty.] In Saxon and old English law. A fine, penalty or amercement imposed for defaults in the assise of bread. *Kennett's Par. Ant.* 114. *Cowell*.

**BREF.** O. Fr. A writ. See *Breve, Brief*.

**BREHON.** In old Irish law. A judge. 1 *Bl. Com.* 100. Brehons, (*breitheamhuin*;) judges.

**BREHON LAW.** [Irish, *breitha-neimeadh.*] The native system of law which prevailed in Ireland, before the conquest by Henry II. 1 *Bl. Com.* 100. *Co. Litt.* 141 a. For a particular view of this system, see *P. Cyclopaedia*.

**BRETOYSE, Bretois.** Fr. Britons or Welshmen. *Lex de Bretoyss*; the law of the Welsh marches. *Blount. Cowell*.

**BREVE,** (plur. *Brevia*.) L. Lat. [Fr. *brief*; O. Fr. *bref, briefve, brieffe*; Scotch *brieve*; from Lat. *brevis*, brief, short.] In old English law. A writ; properly an original writ, (*breve originale*;) by which all actions in the superior courts of England were once required to be commenced. *Non potest quis sine brevi agere*; no man can sue without a writ. *Bract. fol.* 413 b, 112. *Steph. Pl.* 5, 6. 3 *Bl. Com.* 272, 273.

In a larger sense, any writ or precept of the king in writing, under seal, issuing out of any court, whereby he commands any thing to be done for the furtherance of justice and good order; comprising what were called judicial as well as original writs. *Termes de la ley. Blount.*

A commission to a judge or justice of the superior courts of England had, from an early period, the form of a *breve*, or writ,

and was so called. *Bract.* fol. 108 b, *et seq.* See *Close writs*.

Bracton observes that a *breve* is so termed because it *briefly*, and in few words, sets forth the subject matter of the action and the claim of the plaintiff; (*dicitur ideo breve, quia rem de qua agitur, et intentionem petentis paucis verbis breviter enarrat.*) *Bract.* fol. 112, 413 b. Theloall describes a *breve* to be a formal letter or epistle of the king, written in Latin on parchment, sealed with his seal, directed to some judge, officer, minister or other subject, at the suit of the king himself, or at the complaint and suit of another subject, commanding or authorizing something contained in the said letter to be done, for the reason briefly expressed therein, which is to be the subject of judicial examination in some of the king's courts. *Thel. Dig.* lib. 1, c. 1, ¶ 4.

The term *breve* (Græcobarb. βρεβιον,) occurs in the imperial and pontifical constitutions as early as the third century, in the same sense which Bracton gives it, viz. a brief or summary statement in writing, (*scriptum quod summam rei continet.*) *Spelman.* The *breve* of the English courts has been called a letter or epistle, because it commenced in the same way as the letters of the ancient Romans did:—*Titius Aulo suo, Salutem*; Titius to his friend Aulus, Greeting:—*Rex, justitiariis suis, &c., salutem*; The king to his justices, Greeting. Our own writs at the present day commence with the same epistolary phrase:—"The People, &c., to the sheriff, &c., Greeting." See *Epistola, Litteræ*. So a letter of attorney (*litteræ procuratoriæ*) was called in English, as old as Bracton's time, a "writ," (*breve*); and in law French, *breve d'attorney*. *Bract.* fol. 40. *Litt. R.* 143. The modern German *brief* has the same sense of letter, and this meaning seems to be of very high antiquity. *Hicke's Thes. Diss. Epist. in notis*, p. 3. *Steph. Pl. Appendix*, Note (2). See *Writ*.

The great repository of the old English *brevia* is that ancient compilation termed *Registrum Brevium*, the Register of Writs, and usually referred to in the books as "The Register." See *Registrum Brevium*. The *brevia* are here arranged under two general heads, *originalia* and *judicialia*, comprising in the whole upwards of a thousand forms. They are individually named either from the subject matter of them, or from one or more emphatic words of the forms themselves. In the former case, the preposition *de* is usually employed in designating the particular *breve*; thus, *breve de recto*, a writ of right; *breve de ingressu*, a

writ of entry; *breve de conventione*, a writ of covenant, &c. Most of these writs will be found in this dictionary, under the head of DE, with the proper addition in each case.

BREVE DE RECTO. L. Lat. [L. Fr. *brief de droit*.] A writ of right. *Reg. Orig.* 1. *Bract.* fol. 328. So called because the words in the writ were, *quod sine dilatione plenum rectum teneas*, (that without delay you do full right); or because the subject matter of the writ was the right (*rectum*) of property in lands. *Co. Litt.* 115 a. 158 b. 3 *Bl. Com.* 191, 193. See *Writ of right*.

BREVE ORIGINALE. L. Lat. An original writ; a writ which gave origin and commencement to a suit, (*quod actioni originem præstat*). *Bract.* fol. 413 b. 1 *Reeves' Hist. Eng. Law*, 319. *Stat. Marlebr.* c. 30. See *Breve, Original writ*.

BREVE JUDICIALE. L. Lat. A judicial writ; a writ issued in *judicio*, after a suit was commenced.\* *Crabb's Hist. Eng. Law*, 114. *Bract.* fol. 413 b. Any other writ than an original writ.\* See *Breve, Judicial writ*.

BREVE NOMINATUM. L. Lat. A writ in which the circumstances of the case (time, place and demand,) were particularly expressed, or named; as distinguished from the *breve innominatum*, which contained only a general complaint without particulars. *Gilb. C. Pleas*, 3, and note.

BREVIÀ, (plur. of *Breve*.) L. Lat. Writs. *Dicuntur brevia propter eorum brevitatem*; they are called writs on account of their brevity. 3 *Co.* 44. See *Breve. Brevia adversaria*; adversary writs; writs brought by an adversary to recover land. 6 *Co.* 87. *Brevia amabilia*; amicable writs, or those brought by consent and agreement amongst friends. *Id. ibid.*

BREVIÀ FORMATA, or DE CURSU. L. Lat. Writs of form, or of course. Original writs, the form of which was fixed, and which issued of course without special cause shown. *Bract.* fol. 413 b, 202. *Thel. Dig.* lib. 1, c. 2. 4 *Reeves' Hist. Eng. Law*, 430.

BREVIÀ MAGISTRALIA. L. Lat. Writs occasionally issued by the *masters* or clerks of chancery, the form of which was varied to suit the circumstances of each case. *Bract.* fol. 413 b. *Thel. Dig.* lib. 1, c. 2. 3 *Wooddes. Lect.* 89.

**BREVI TESTATA.** L. Lat. Short written memoranda, attested by witnesses, and used in feudal times to perpetuate the tenor of conveyances and investitures, after parol grants had given rise to disputes and uncertainties. *Feud. Lib.* 1, t. 4. 2 *Bl. Com.* 307. Their authority rested altogether on the testimony of the witnesses, (who were the neighbors and peers of court) there being no execution or sealing by the parties themselves; (*utpote nullius sigillo, sed testium autoritate valida.*) *Spelman.* Blackstone regards our modern deeds as merely improvements or amplifications of these *brevia*. 2 *Bl. Com. ub. sup.*

**BREVIARIUM ALARICIANUM, or BREVIARIUM ANIANI.** Lat. (The breviary, or abridgment of Alaric, or of Anian.) A code of law compiled by order of Alaric II., king of the Visigoths, for the use of the Romans living in his empire, published A. D. 506. It was collected by a committee of sixteen Roman lawyers from the *Codex Gregorianus*, *Hermogenianus*, and *Theodosianus*, some of the later novels, and the writings of Gaius, Paulus and Papinianus. In the middle ages it is commonly referred to, under the titles *Corpus Theodosianum*, *Lex Theodosiana*, *Liber Legum*, or *Lex Romana*. 1 *Mackeld. Civ. Law*, 49, § 59.

**BREVIATE.** In English law. An abstract, or epitome. *Holthouse.*

A short extract, or copy of a paper or writing. *Hob.* 114.

**BRIBERY.** [from Fr. *briber*, to devour, or eat greedily.] In criminal law. The offence of taking any undue reward by a judge, juror or other person concerned in the administration of justice, or by a public officer, to influence his behavior in his office. 4 *Chitt. Bl. Com.* 139, and note. 3 *Inst.* 145. 1 *East*, 183. 4 *Burr.* 2494. 1 *Russell on Crimes*, 154. 2 *N. Y. Rev. St.* [682], 569, § 10.

The offence of offering a bribe to a judicial or public officer, whether it be accepted or not. 4 *Bl. Com. ub. sup.* 3 *Inst.* 147. 2 *East*, 5. *Russ. & R. Cr. C.* 107. 2 *Dallas' R.* 384. 2 *N. Y. Rev. St.* [682], 568, § 9. The attempt to bribe is a crime; it is complete on his side who offers it. Lord Mansfield, 4 *Burr.* 2500.

The offence of giving, promising or receiving money to procure votes, or to influence voters at elections to public offices. *Stat.* 49 *Geo. III.* c. 118. *Stat.* 5 & 6 *Will. IV.* c. 76. 1 *N. Y. Rev. St.* [149], 136, § 4.

**BRIEF.** In practice. An abridgment of a plaintiff's or defendant's case, prepared by his attorney, for the instruction of counsel on a trial at law. It generally consists of an abstract of the *pleadings*, a statement of the *facts* of the case as they will be proved, and a list of the names of the *witnesses*, with a statement of what each will prove. To these are sometimes added observations by the attorney, in the nature of suggestions to counsel. 1 *Arch. Pr.* 185. *Arch. Forms*, 116.

**BRIEF, Briefe, Brieffe, Briefve, Bref.** L. Fr. A writ. *Briefe de droit*; a writ of right. *Co. Litt.* 158 b.

**BRIEVE.** [from Lat. *breve*, q. v.] In Scotch law. A writ. 1 *Kames' Equity*, 146. 1 *Forbes' Inst.* part 4, b. 2, c. 1, tit. 2, § 1.

**BRIGA.** L. Lat. [Fr. *brigue*.] In old European law. Strife, contention, litigation, controversy. *In brigam ponere terras*; to put or bring lands into controversy. *Spelman.* *Cowell.* *Blount.*

**BRIGBOTE.** See *Brugbote*.

**BRITTON.** The author of a treatise on the law of England, in Law French, supposed to have been written or published under the direction of Edward I. Lord Coke makes him to be the same person with John Breton who was Bishop of Hereford and a judge, in the reigns of Henry III. and Edward I. 8 *Co. pref.* 10 *Co. pref.* This opinion has been disputed by others, (though it has the support of the old chronicler Florilegus, otherwise called Matthew of Westminster,) on the ground that the treatise itself 'makes mention of several statutes known to have been passed after this Bishop of Hereford's death, which took place A. D. 1275. *Hengham*, p. 129, note, cited in *Wingate's Britton*, pref. 2 *Reeves' Hist. Eng. Law*, 281. Another opinion is, that the work was written by a judge of the same name with the bishop, and who was a contemporary of Bracton. *Hengham, ub. sup.* Lord Coke's statement that the bishop published his work in the fifth year of Edward I. can hardly be correct, as the old accounts agree that he died in the third year of that reign. It is reasonably certain, however, that he wrote the work, and that it was published after his death, with additions comprising the statutes above referred to. *Wingate's Britton*, pref.

The author's name has been variously written, *Britton*, *Briton*, *Le Breton*, *Bre-*

*toun*, and *Beckton*; a circumstance not uncommon at that early age. The same name has also been given to the work itself; thus, Florilegus above mentioned says of the Bishop of Hereford, that "he wrote a book upon the laws of England, which is called *Le Bretoun*." Pitseus observes that he compiled from various authors a great volume of laws, which he called *Lex Anglicana*, or *Bretton*. According to Balæus, the title was *De Legibus Anglicanis*; according to F. Godwin, *De Juribus Anglicanis*. Wingate, in his edition, (1640), gives it the name of the author, *Britton*. The later edition by Kelham (1762) is published under the title of *The Ancient Pleas of the Crown*.

From the similarity of the subject matter, as well as some resemblance in the name, this treatise is generally considered as a mere abridgment of the great work of Bracton, interspersed with some new matter. It is not, however, without claims to the character of an original production, and seems to have originally stood higher than Bracton as an authority. It is composed of one hundred and twenty-six chapters, written in the true French of the time, embracing various heads of civil and criminal law and practice; and commences in the king's name:—*Edwarde, par la grace de Dieu, roy Dengleterre et seignieur de Irlanda, a tous ses feals et ses leaus, et ses sujets de Engleterre, et de Irlanda, pees et grace de sauvacon*; (Edward, by the grace of God, king of England and lord of Ireland, to all his faithful and liege people and his subjects of England and of Ireland, peace and grace of salvation.) A marked feature of the work, as distinguished from that of Bracton, is the absence of all reference to the civil law.

The text of Britton has been greatly corrupted and mutilated. Hence the remark of Montague, C. J., that the book contains many errors. *Plowd.* 58, arg. Wingate, in his edition of 573 pages, (or 287 folios) 12mo. has given a list of 650 corrections, or substituted readings.

**BROCAGE**, *Brokage*. [L. Lat. *brocagium*, *abrocagium*.] In old English law. The wages or hire, compensation or commission of a broker. *Cowell. Blount*. In the stat. of Jac. I. c. 21, it is written *brokerage*, which is the modern term. The old form of the word is still retained in the expression *brokage of marriage*, which signifies a reward or compensation for bringing about a marriage. See *Marriage brokage*.

The business or occupation of a broker. *De Vyne's case*, cited 16 *Mees. & W.* 177, note.

**BROCARIUS**, *Broccarius*. L. Lat. In old Scotch law. A broker, negotiator, mediator, or middle man. *Skene de Verb. Signif. Cowell. Blount*.

**BROCCATOR**. L. Lat. In old English law. A broker. *Blount*, voc. Broker. See *Broccarius*.

**BROCELLA**, *Broccella*. L. Lat. [L. Fr. *broce*, *brocelle*; from O. Lat. *bruscia*, *brocia*.] In old English law. A wood, a thicket or covert of bushes and brushwood. *Cowell. Blount*.

**BROCHE**. L. Fr. A lance. *Britt.* c. 66.

**BROCHIA**. L. Lat. [from Fr. *broche*, q. v.] A word used by Bracton in describing the equipment of a horseman intended for military service, which Spelman supposes to have meant a large vessel for carrying liquids. *Bract.* fol. 36, 87 b. It seems, however, properly to signify a horseman's lance, from the Fr. *broche* of the same meaning, which is the word employed by Britton in what may be considered the parallel passage. *Britt.* c. 66. That it was an iron instrument is clearly shown by an extract given in Cowell, from a record 13 Edw. I. See *Saccus*.

**BROGGER**. [L. Fr. *broggour*.] A broker; so called in old English statutes. *Stat.* 10 Ric. II. c. 1. Adjudged to be a good addition in law. *H.* 9 Hen. VI. 65, cited *Thel. Dig.* lib. 6, c. 15.

**BROKER**, (anciently **BROGGER**.) [L. Lat. *broccator*, *abrocator*, *broccarius*, and sometimes *auctionarius*, and *correctarius*; Lat. *prozeneta*.] One who makes a bargain for another, and receives a commission for so doing. Tindal, C. J., 6 *Bing.* 702, 706. An agent employed among merchants and others, to make contracts between them in matters of trade, commerce or navigation, for a commission commonly called *brokerage*. *Russell on Factors*, 3, 4.—An agent employed to make bargains and contracts between other persons, in matters of trade, commerce or navigation, for a compensation commonly called *brokerage*. *Story on Agency*, § 28.

A broker is not, in general, authorized to act or contract in his own name; nor is he entrusted with the possession of what he is employed to sell, or empowered to obtain possession of what he is employed to purchase; but he acts merely as a middleman or negotiator between the parties; and in these respects he is distinguished from a

*factor*. 2 *B. & Ald.* 137, 143. *Russell on Factors*, 4. 2 *Kent's Com.* 622, note.

The earliest definitions of this term confine the employment of brokers to dealings between merchant and merchant, exclusively. Thus, by the statute 1 Jac. I. c. 21, brokers are described to be persons employed by "merchants English and merchants strangers, in contriving, making and concluding bargains and contracts between them, concerning their wares and merchandizes, and moneys to be taken up by exchange between such merchants and merchants, and tradesmen." *Russell on Factors*, 2. *Blount*. Chief Baron Comyn describes them as "persons employed among merchants, to make contracts between them, and to fix the exchange for payment of wares sold or bought." *Com. Dig.* Merchant, (C.) These definitions, however appropriate at a period when merchandize and exchange brokers appear to have constituted the only classes of this description of agents, have been very properly regarded by modern writers as too limited to include the various classes of brokers recognized at the present day; although in a very recent case in England, the court of Exchequer seemed disposed to abide by the ancient interpretation of the term. 16 *Mees. & W.* 174.

The etymology of the term *broker* has been variously given. By some it has been derived from the Saxon *broc*, misfortune, as denoting a broken trader; the occupation being formerly confined, it is said, to unfortunate persons of that description. *Tomlins*. According to others, it is formed from the French *broieur*, a grinder or breaker into small pieces, a broker being one who *beats*, or draws a bargain into particulars. *Termes de la ley*. *Cowell*. The Latin form *abroccator*, however, seems to point distinctly to the Sax. *abræcan* (to break), as the true root, which, in the old word *abbrochment* (q. v.) or *abroachment*, had the sense of *breaking up goods*, or selling at retail. A broker, therefore, would seem to have originally signified a *retailer*, and hence we find the old word *auctionarius* (q. v.) used in both these senses.

**BRUARIUM**, *Bruzrium*. L. Lat. [from Fr. *bruyere*, a heath.] In old English law. A heath ground; ground where heath grows. *Spelman*.

*Bruera*; a heath, or heathy ground. *Bract.* fol. 231. *Reg. Orig.* 1 b, 2. *Co. Litt.* 4 b.

*Bruerum*; a heath. *Bract.* fol. 229 b.

**BRUGBOTE**, *Brigbote*. Sax. [from

*brug*, or *brig*, a bridge, and *bote*, reparation.] In old English law. A tribute or contribution towards the repairing of bridges. *Quietum esse a brugbote*; to be quit of *brugbote*; to be free from this duty. *Spelman*.

**BRUILLUS**, *Brogillus*. L. Lat. [Fr. *breil*, *brevil*.] In old English law. A wood or grove; a thicket or clump of trees in a park or forest. *Cowell*. *Whishaw*. *Bruilletus*, (dimin. of *bruillus*); a small coppice wood or thicket. *Cowell*.

**BRUSOUR**. L. Fr. In old English law. A breaker. *De brussours de la prison le roy*; of breakers of the king's prison. *Britt.* c. 29.

*Brusure*; a breaking. *Brusure de pointz*; breaking of bridges. *Britt.* c. 122.

*Brussura*, (L. Lat.) A bruise. *Bract.* fol. 122.

**BULLA**. Lat. [Græcobarb. *βούλλη*, *βούλλιον*.] A seal used by the Roman emperors, during the lower empire; and which was of four kinds, gold, silver, wax and lead. These are described by *Spelman* in detail.

A letter, brief or charter sealed with such a seal, (*litteræ bullatæ*.) *Spelman*.

A brief, mandate or bull of the pope, having usually a leaden, but sometimes a golden seal. *Id.* *Blount*. *Cowell*.

**BULLARIA**. L. Lat. [L. Fr. *boillourie*.] In old English law. A bullary, or boilary; a place for boiling. *Bullaria aquæ salis*; a boilary of salt water; a salt house or salt pit, where salt is boiled. *Towns. Pl.* 57. *Co. Litt.* 4 b.

*Bullitio salis*; a boiling of salt; as much brine or salt as was made from one boiling. *Cowell*.

**BUNDA**, *Bonda*, *Bonna*. L. Lat. [L. Fr. *bunde*; from Sax. *bunna*, an elevated object; Gr. *βουνος*, a hill, or hillock; or from Sax. *ban*.] In old English law. A bound, boundary, border or limit, (*terminus*, *limes*.) *Spelman*, vocc. *Bannum*, *Bonna*. 4 *Inst.* 318.

*Bundæ, et metæ et rationabiles divisæ*; bounds and metes and reasonable limits. *Bract.* fol. 166 b. *Per metas et bundas*; by metes and bounds. 2 *Crabb's Real Prop.*, 146, §§ 1149, 1150. *Secundum metas, mæras, bundas et marchias forestæ*; according to the metes, meres, bounds and marches of the forest. 18 *Edw.* III. *Itin. Pick.* fol. 6, cited in *Blount*, voc. *Bound*. And see *Reg. Orig.* 263 b. *Reg. Jud.* 84 b.

**BURG, Burgh.** Sax. [L. Lat. *burgus*.] A castle, or fortified place. *Spelman*, voc. *Burgus*. According to Sir F. Palgrave, the *burgh* among the Anglo Saxons was an hundred, or assemblage of hundreds, surrounded by a wall or moat. *Palgr. Rise*, p. 102.

A borough. *Spelman*. See *Burgus*.

**BURGAGE.** A dwelling-house in a borough town, anciently so called. *Blount*.

**BURGAGE TENURE.** [L. Lat. *burgagium*; L. Fr. *bourgage*, from Sax. *burg*, L. Lat. *burgus*, a borough.] In English law. A tenure by which houses, or lands which were formerly the site of houses, in ancient boroughs, are held of the king, or other lord of the borough, at a certain yearly rent. *Glanv. lib. 7, c. 3. Litt. sect. 162, 163. Co. Litt. 108 b. 2 Bl. Com. 82. Blount. 1 Steph. Com. 198. 1 Crabb's Real Prop. 593, § 749.* It is considered to be a species of socage; the tenements being holden either by a certain annual pecuniary rent, or by some services relating to trade or handicraft; such as repairing the lord's buildings, providing the lord's gloves or spurs, &c., but no way smelling of the plough or tillage, and having no relation to military service. *Litt. sect. 162. Somner Gavelk. 142—148. Spelman*, voc. *Burgagium. P. Cyclopædia*.

**BURGARI, Burgenses.** L. Lat. [from *burgus*, a borough; Sax. *burghwærn*.] In old English law. Burghers or burgesses; inhabitants of a *burgus*, borough, or walled town. *Spelman*, voc. *Burgarii*.

**BURGATOR.** L. Lat. [from *burgus*, a borough, a town, or enclosed place.] In old criminal law. A burglar or housebreaker; one who broke into and robbed a *burg*, or enclosed place. *Spelman*, voc. *Burglaria*. See *Burglar*.

**BURGBOTE.** Sax. [from *burg*, a castle, or town, and *bote*, reparation.] In old English law. A tribute or contribution (*auxilium*.) towards the repairing of castles or walls of defence, or of a borough or city. *Spelman. Co. Litt. 109 a. Cowell*.

Exemption from such a tribute. *Fleta*, lib. 1, c. 47.

**BURGEMOTUS.** L. Lat. In Saxon law. A burg mote, or burgh mote. *Spelman*. See *Burghmote*.

**BURGENSES.** See *Burgarii*.

**BURGESS.** [L. Lat. *burgarius, burgensis*.] In English law. An inhabitant or freeman of a borough or town; a person duly and legally admitted a member of a municipal corporation. *Spelman*, voc. *Burgarii*. 3 *Steph. Com.* 188, 189. See *Municipal corporation*. A *burgess* of a borough corresponds with a *citizen* of a city; and these are mentioned as distinct classes in the statute 5 Ric. II. c. 4; although the inhabitants of a city were sometimes called burgesses, and this application of the word is now revived in England. *Spelman, ub. sup. 1 Man. & Gr. 1*, note (a).

An elector or voter; a person legally qualified to vote at elections. The word in this sense is particularly defined by the statute 5 & 6 Will. IV. c. 76, ss. 9, 13. 3 *Steph. Com.* 192.

A representative of a borough or town, in parliament. *Co. Litt. 109 a. 1 Bl. Com. 174.* See *Borough*. One of the branches of the legislature of the State of Virginia is called the House of Burgesses.

A magistrate of a borough. *Blount*.

The origin of this term dates from a period prior to the Norman Conquest, it having been usual for such persons of free condition as were not landowners, to settle in the towns, and occupy houses there, as tenants to the crown or some inferior lord, under the name of *burgesses*; to form themselves by license from the crown, (as many classes of persons did in that age,) into voluntary associations or fraternities called *guilds*; to be entitled in their capacity of burgesses to certain property, and in the same capacity to be exempt from certain burthens, and to be subject to certain liabilities. 3 *Steph. Com.* 189. *Domesday Book*, cited *ibid.* *Spelman*, voc. *Burgarii. Stat. Merton*, c. 7.

**BURGESS ROLL.** A roll or list, in the form of a book alphabetically made out, required by the municipal corporation act, (5 & 6 Will. IV. c. 76,) to be kept in corporate towns or boroughs, containing the names of those burgesses who are entitled to such new rights as the act for the first time confers on these boroughs. 3 *Steph. Com.* 192, and note (k); 196, 197. This seems to be otherwise called the *burgess list*; although in a late case a distinction between the terms was contended for. 3 *Ad. & El. N. S.* 475, 480.

**BURGESSOURS, Bourgesours.** L. Fr. Burglars are so called by Britton, cc. 10, 29.

**BURGH.** [Lat. *burgus*.] A borough. *Litt. sect. 162, 164. Co. Litt. 108, 109.*



**BURGHBRECH**, *Burghbrich, Borghbrech*. [Sax. *borhbryce, borhbrece*; from *borh*, a pledge or surety, and *bryce*, a breach or violation.] In Saxon law. Breach of pledge, (*fidejussionis violatio, plegii fractio*); the offence of violating the pledge given by every inhabitant of a tithing, to keep the peace; breach of the peace. *Spelman*. See *Borgbrech*.

**BURGH ENGLISH**. See *Borough English*.

**BURGHERISTH**. Sax. A word used in Domesday, supposed to signify a breach of the peace in a town; although *Spelman* speaks doubtingly of its meaning. *Cowell*. *Spelman*. Mr. Somner thinks it should be *burghbrich*.

**BURGHMOTE**, *Burgmote, Burgemote*. Sax. [L. Lat. *burgemotus, burgemotus, burgimotus*; from *burg*, a burgh, and *mote* or *gemote*, a meeting.] In Saxon law. The court or meeting of a burgh or borough; a borough court, (*curia burgensis*.) A court held in burghs or towns three times a year, at which the ealdorman, or alderman presided. *LL. Edg.* c. 5. *LL. Canuti*, c. 44. *Spelman*. 1 *Spence's Chancery*, 58. *Crabb's Hist. Eng. Law*, 27. See *Gemote*.

**BURGHWAR**, plur. *Burghwarn*. Sax. [from *burg*, and *war*, a man.] In Saxon law. An inhabitant of a burgh, or borough, (*burgi vir*); a Burgess or burgher; (*burgensis, burgarius*.) *Williem, King, grets Williem biscoep, & Godfred portrefan, & ealle tha burghwarn binnan London, &c.*; William, King, greets William, bishop, and Godfrey portgreve, and all the burgeses within London. The commencement of a charter granted by William the Conqueror to the city of London. *Spelman*. *Cowell*, voc. *Portgreve*. *Blount*, h. v.

**BURGLAR**. [L. Lat. *burglator, burgator*, quasi *burgi latro*, the robber of a burgh, or fenced place.] In criminal law. A nocturnal housebreaker; one who by night breaks and enters into a mansion [or dwelling] house, with intent to commit a felony. 3 *Inst.* 63.

In American law, this definition has been considerably modified. See *Burglary*.

**BURGLARIOUSLY**. In criminal pleading. A word held essential in indictments for burglary, as the corresponding Latin word *burglariter* formerly was. *Wharton's*

*Am. Crim. Law*, 101. See *Burglariter*. In Massachusetts, however, under the revised statutes, it has been held not essential. 4 *Metcalf's R.* 357.

**BURGLARITER**. L. Lat. (*Burglariously*.) In old criminal pleading. A necessary word in indictments for burglary. 4 *Bl. Com.* 307. Held to be a word of art (*vox artis*), which could not be expressed by any periphrasis or circumlocution. 4 *Co.* 39. *Cro. Eliz.* 920.

**BURGLARY**. [L. Lat. *burglaria, burgi latrocinium*; Fr. *burg laron*; Sax. *husbrec*.] In English criminal law. The crime of breaking and entering into a dwelling house, or a building immediately connected therewith, in the night, with intent to commit a felony, whether such felonious intent be executed or not. 3 *Inst.* 63. 1 *Hal. P. C.* 549. 4 *Bl. Com.* 224. *Stat.* 7 & 8 *Geo. IV.* c. 29, s. 13. 4 *Steph. Com.* 146, 148. 1 *Russell on Crimes*, 785. *Wharton's Am. Crim. Law*, 352.

The breaking out (*effractio*) of a dwelling house in the night time, after having entered it with intent to commit felony, or after committing a felony while in such house. *Stat.* 7 & 8 *Geo. IV.* c. 29, s. 11. *Steph. Crim. Law*, 162. 4 *Steph. Com.* 151. See *Breaking, Effractores, Entering, Dwelling house, Curtilage, Night*.

In American law, the English definition of burglary has been so far modified as to include offences committed by day as well as by night, and in other buildings than dwelling houses; and various degrees of the crime have been established by statute in several of the states. *Wharton's Am. Crim. Law*, 350, 352.

The term *burglary*, according to *Spelman*, is of Norman origin, the corresponding term in Saxon law being *husbrec*. It is usually supposed to be derived either from the Lat. *burgus*, a town, dwelling or enclosed place, and *latrocinium*, robbery, or from Fr. *bourg*, and *larrecin*, of similar significations; its radical meaning being the robbery, (or the breaking into, with a view to the robbery) of any fenced or enclosed place, as distinguished from the open country. *Spelman*, voc. *Burglaria*. *Cowell*. See *Burgus*. Hence it originally signified the breaking open, not only of a dwelling house, but of a church, and also the breaking of the walls or gates of a town (*burgus*), or city, (which, after the civil law, were anciently considered sacred,) with intent to commit a felony. *Spelman*. *Bract.* fol. 8,

207 b. So Britton defines burglars to be "those who feloniously, in time of peace, break churches, or the dwelling houses of others, or the walls or gates of cities, or burghs." *Britt.* c. 10. The circumstance of breaking *by night*, (*noctanter*), was not originally considered a characteristic of this crime, but seems to have been introduced in the reign of Edward VI. *Spelman.* 4 *Reeves' Hist. Eng. Law*, 539. *Crabb's Hist. E. L.* 309. Bracton classes burglars with robbers and murderers, who practice their wickedness by day and by night; (*murdritores, et robbatores, et burglatores, qui malitiam suam exercent die ac nocte.*) *Bract.* fol. 115 b.

**BURGLATOR.** L. Lat. In old English law. A burglar. *Bract.* fol. 115 b, 117.

**BURGUNDIAN LAW.** See *Lex Burgundionum*.

**BURGUS.** L. Lat. [*Sax. burg, burh, burch, berg, beorg, birg, byryg, burug*; from Gr. *νέγυς*, a tower.] In old European law. A fortified or enclosed place or dwelling, (*locus munitus, habitaculum munitum*). *Spelman.*

A town or place enclosed with a wall or rampart. *Id.*

A town of note, not enclosed. *Id.*

A borough or burgh. *Id.*

**BURLAWS, Birlaws, Byrlaws.** In Scotch law. Laws made by neighbors elected by common consent in the birlaw courts. *Skene de Verb. Signif.*

Laws made by husbandmen, &c., concerning neighborhood, (*rusticorum leges*). *Id.* in *Reg. Maj.* lib. 4, c. 39, § 8. *Spelman* (voc. *Bellagines*) considers this word essentially the same with *by laws*, (q. v.)

**BURLAW OR (BIRLAW) COURTS.** Courts composed of neighbors elected and chosen by common consent, which take cognizance of complaints between neighbor and neighbor; the judges (who are arbitrators) being called *birlawmen*. *Skene de Verb. Signif. Spelman*, voc. *Bellagines*. See *Bylawmen*.

**BURNING IN THE HAND.** In old criminal law and practice. The punishment of burning with a hot iron on the brawn of the left thumb, formerly inflicted upon lay offenders who were allowed the benefit of clergy, in order to distinguish their persons, so as to prevent their claiming that privilege a second time. 4 *Bl. Com.* 367. 5 *Co.* 51.

The old entry of judgment in these cases was: *Ideo consideratum est quod* (le offender) cauterizetur in manu sua lava, &c.; Therefore it is considered that (the offender) be burnt in his left hand, &c. *Rast. Entr.* 1, 6, & 56 a. *T. Raym.* 370. The burning itself was done in open court, and seems to have been subject to the direction of the judges. 1 *Salk.* 61. Thus, in an old case where a prisoner was found guilty of manslaughter, under circumstances of great provocation, it is said he "had his clergy at the bar, and was burned in the hand, and the court directed the executioner to burn him gently, because there could not be greater provocation." *T. Raym.* 212. To what length the courts carried their discretion in this particular appears strikingly from a remark made by counsel in a more modern case, that "the punishment of burning in the hand is constantly and notoriously done in the face, and with the knowledge of the judges themselves, with a cold iron. 2 *Burr.* 794. See *Clergy, Benefit of clergy*.

**BURROWMEALIS, Burrowmeals, (Borough mailles.)** In Scotch law. Rents paid to the king by the burgesses, (*burgenses*) or inhabitants of a borough, or burrow, and which went to the king's private treasury, (*fisco et patrimonio regis*). The word *mealis*, (the form of the Scotch plural,) is considered by *Spelman* as signifying the same thing as the old English law term *firma*, a *ferm* or *farm*, i. e. provisions or rent paid in provisions. It is probably the same with *mail* in the word *blackmail*, and with the modern English *meal*, a portion of food taken at stated intervals. See *Blackmail, Ferm, Maile*.

**BURSA.** L. Lat. A purse. *Spelman.* *Bract.* fol. 84.

**BUSCA.** L. Lat. In old English law. *Hedgewood.* *Reg. Orig.* 105.

Underwood, billet or brushwood. *Blount.* See *Boscus*.

**BUSCARL, Butsecarl, Buzecarl.** Sax. [from *bussa*, a ship, and *carl*, an attendant.] In Saxon and old English law. Seamen or marines, (*milites nautici*). *Spelman.* *Domesday*, Titt. *Willel.* *Wilton*.

**BUSELLUS, Bussellus, Bussellum.** L. Lat. A bushel. See *Bussellus*.

**BUSHEL.** [L. Fr. *bussel*; L. Lat. *busellus, bussellus*.] A measure of capacity containing eight gallons. The Winchester

ter bushel, which was the standard measure used in England from the time of Henry VII. to the year 1826, contained 2150.42 cubic inches. By statute 4 & 5 Geo. IV. c. 74, the Imperial bushel for liquids was made to contain (according to the standard gallon,) 80 pounds of distilled water, or 2218.192 cubic inches. By the same act the bushel for dry measure was prescribed to contain 2815 cubic inches. This was a heaped bushel, but it was abolished by stat. 4 & 5 Will. IV. c. 49.

In the United States, the Winchester bushel has generally been adopted. In New-York, the provisions of the statute 4 & 5 Geo. IV. c. 74, have been in a great degree followed, and the bushel is declared to contain, at the mean pressure of the atmosphere, at the level of the sea, eighty pounds of distilled water at its maximum density. 1 *Rev. St.* [608, § 14,] 618, § 19. See 3 *Rev. St.* 531—546. (2d ed.) The heaped bushel is expressly retained. 1 *Id.* [608, §§ 15, 16,] 618, §§ 20, 21.

**BUSONES.** L. Lat. A word occurring in the following passage of Bracton: *Justiciarii, vocatis ad se quatuor, vel sex, vel pluribus de majoribus comitatibus, qui dicuntur busones comitatibus, &c.* *Bract. fol.* 115 b. Mr. Reeves observes that the anomalous appellation of *busones* is to be met with nowhere but in this passage. 2 *Reeves' Hist. Eng. Law*, 2, note. Spelman says the words *qui dicuntur busones comitatibus* were wanting in his MS. copy. *Gloss. in voc.* The word *busones*, if genuine, no doubt signified the principal persons of the county, and is thought by some to have been synonymous with *barones*, (barons.) *Crabb's Hist. Eng. Law*, 161. Some copies have *barones*.

**BUSSA, Buscia.** L. Lat. In old English law. A ship of large size and clumsy construction, (*panda albo et obtusa prora*). *Spelman*. The word *buss* is now used to denote a small vessel employed in the herring fishery.

**BUSSEL.** L. Fr. A bushel. *Bussels et demy bussels.* *Britt.* c. 30.

**BUSSELLUS.** L. Lat. [contracted from *butticellus*, *butticella*, dim. of *butta*, q. v.] In old English law. A bushel. *Standardum busselli, galonæ et ulnæ sigillo domini Regis ferreo signentur*; the standard bushel, gallon and ell shall be stamped with the king's iron seal. *Stat. de Pistoribus*, 31 *Edw. I.* c. 8. *Spelman*. See *Galo*.

**BUTLERAGE.** In old English law. A very ancient hereditary duty belonging to the crown, at first called *prisage*, (q. v.) being the right of *taking* two tuns of wine from every ship importing into England twenty tuns or more, which by charter of Edward I. was exchanged into a duty of two shillings for every ton imported by merchant strangers, and called *butlerage*, because paid to the king's butler. 1 *Bl. Com.* 315. *Termes de la ley.* *Molloy de Jur. Marit.* 302. 2 *Inst.* 59, 60.

**BUTT.** In old English law. A measure of wine, containing at least 126 gallons. *Stat. 1 Ric. III.* c. 13. *Cowell*. See *Butta*. A measure of land. See *Buttum*.

**BUTTA, Buttis.** L. Lat. [Fr. *bout*; Sax. *byt*, *bytte*, a leathern bottle or bag.] In old English law. A standing measure of wine. *Cowell*, voc. *Bussellus*. *Towns. Pl.* 29. A vessel for measuring, holding or carrying liquids.\* The bags of leather in which they formerly carried water from the Severn into the city of Worcester were called *byttes*, and each load of water was termed a *bytte* of water. *Kennett's Gloss.* voc. *Bussellus*. *Cowell*.

**BUTTALS.** [contracted from *abuttals*, q. v.] In old conveyancing. The boundary lines of lands on the *ends*, as distinguished from those on the *sides*, which were called *sidings*. *Buttals* and *sidings*, east, west, north and south. *Cro. Jac.* 183.

**BUTTED AND BOUNDED.** A phrase sometimes used in conveyancing, to denote the boundaries of lands. See *Butts* and *bounds*.

**BUTTS.** [L. Lat. *butta*, from Fr. *bouts*, ends.] In old English law. Short pieces of land left unploughed at the *ends* of fields, where the plough was *turned about*, (otherwise called *headlands*,) as *sidelings* were similar unploughed pieces on the *sides*.\* See *Capitia*, *Headlands*, *Sidelings*.

This word is very obscurely defined in the old books, "the ends or short pieces of lands in arable ridges and furrows." *Cowell*. A case in Littleton's Reports, however, clearly illustrates its meaning. A libel was filed in the court christian for tithes of hay, and the defendant showed that the hay was growing upon headlands and *butts* in cornfields. A prohibition was applied for, and allowed, the court holding that the defendant was discharged of tithes in this case by necessity, for it was relin-

quished by the *turning of the plough*. *Litt. R.* 13. *Butts* seem to have been untilled slips of land in the *ends* of fields, just as *balks* (a term still used,) were similar untilled slips in the *body* of fields or commons. 2 *Steph. Com.* 9, note. *Brande*, *voc. Common*. Both words have the radical sense of a *stopping*, and *turning off*, or around. See *Butts* and *bounds*.

**BUTTS AND BOUNDS.** A phrase sometimes used in conveyancing, where a particular piece of land is described by enumerating the several lands or parcels which adjoin it, (or upon which it *abuts*) on the different sides. Properly, however, these words are descriptive of the *lines* which bound or circumscribe a piece of land, without reference to exterior objects, having nearly or quite the same sense as the more technical expression "*metes and bounds*." In lands of the ordinary rectangular shape, *butts* are the lines at the *ends*, (Fr. *bouts*,) and *bounds* are those on the *sides*, or *sidings*, as they were formerly termed. See *Buttals*, *Abuttals*. But in lands of irregular shape, *butts* are the angular points, or corners, where the boundary lines stop and turn in a new direction. This has been sufficiently explained under other heads. See *Abuttals*, *Butts*. These distinctions, however, are generally disregarded in practice.

A further illustration of the true meaning of *butt* is derived from that of *mete*, which, according to Spelman, is its synonyme. *Mete* is from the Lat. *meta*, the goal of a race course, or point at which some object was set up, (like a *butt* or mark to shoot at,) about which the course *turned*, or where it finally came to an *end*. *Spelman*, *voc. Abuttare*.

**BUTTUM.** L. Lat. A butt or measure of land; (*buttum terræ*.) *Carta M. de Sibbeford*, cited in *Blount*.

**BY BILL, BY BILL WITHOUT WRIT.** In practice. Terms anciently used to designate actions commenced by original *bill*, as distinguished from those commenced by original *writ*, and applied in modern practice to suits commenced by *capias ad respondendum*. 1 *Arch. Pr.* 2, 337. 5 *Hill's N. Y. R.* 213.

**BY-LAWS.** [L. Lat. *bilagines*, *bellagines*, from *by*, a town.] Originally, the local laws of towns, or municipal corporations, as distinguished from the general laws of the land. See *Bilagines*.

Now generally used to signify the private

laws or regulations made by any corporation for its own government; which are binding upon it if made in conformity with the general law of the land; otherwise they are void. 1 *Bl. Com.* 475, 476. 2 *Kent's Com.* 296, and note. *Angell & Ames on Corp.* 323, ch. 10.

**BY LAW MEN.** In English law. The chief men of a town, representing the inhabitants. See 6 *Ad. & Ell. N. S.* 60.

**BY THE BYE.** [Lat. *obiter*.] In practice. Incidentally. A term formerly applied in English practice to a peculiar mode of declaring, as distinguished from declaring in chief. A declaration *in chief* was at the suit of the same plaintiff for the principal cause of action, or that for which the writ was sued out; a declaration *by the bye* was at the suit of a *different* plaintiff, or of the same plaintiff for a *different* cause of action. 1 *Tidd's Pr.* 419. The practice of declaring *by the bye* is now abolished. *Archb. New Pr.* 293.

## C

**CA.** L. Fr. Here. *Ca et la*; here and there. *L. Fr. Dict.*

**CABALLERIA.** In Spanish law. A portion of spoils taken or lands conquered in a war, granted to a horse soldier. *Dict. Span. Acad.* 12 *Peters' R.* 444, note. An allotment of land, being a lot of one hundred feet front and two hundred feet deep. 2 *White's Recop.* [38] 49.

**CABLISH.** [L. Lat. *cablicium*, *cablicia*; Fr. *cables*, *cablis*.] In the forest law. Brush wood, or browse wood. *Crompt. Jur.* 163, 263. According to Spelman, wind-fallen wood, (*caduca ligna ventis dejecta*.) *Spelman*, *voc. Cablicia*. *Blount*.

**CADASTRE.** In Spanish law. An official statement of the quantity and value of real property in any district, made for the purpose of justly apportioning the taxes payable on such property. 12 *Peters' R.* 428, note.

**CADERE.** L. Lat. In old practice. To fall, fail, cease, or come to an end; to abate. *Cadit actio*; the action fails, or abates. *Bract.* fol. 308, 308 b. *Cadit appellum*. *Id.* 140 b, 141. *Cadit assisa*. *Id.* 192 b, 210 b. *Cadit breve*. *Id.* 161, 182 b. *Cadit loquela*. *Id.* 260 b, 363.

*Cadit warrantia.* *Id.* 394. *Cadit quæstio*; there is an end of the question. The opposite of *stare*, (to stand,) and *tenere*, (to hold). *Aut stabit appellum aut cadet*; the appeal will either stand or fall. *Bract.* 140 b. *Et sic vel cadit breve omnino, vel stabit quantum ad quosdam, et cadet quantum ad alios*; and so the writ either abates altogether, or will stand good as to some, and abate as to the others. *Id.* fol. 414. *Cadit breve et assisa versus tales, licet teneat versus alios*; the writ and assise fails against such, though it holds against the others. *Id.* fol. 203. *Ubi cadit actio, ibi cadit breve*; where the action fails or abates, there the writ abates also. *Id.* fol. 414. See *Chet.*

*Cadere a*, or *ab*. To fail in, or be defeated; to lose. *Cadat ab actione sua et a causa*; he shall fail in his action and cause. *Bract.* fol. 280. *Cadit mulier a casu*; the woman loses her case. *Id.* 301 b. *Cadat a causa sua*; he shall lose his cause. *Id.* fol. 308 b. *Qui cadit a syllaba cadit a tota causa*; he who mistakes in a syllable, loses his whole cause. *Stat. Wales, 12 Edw. I.* 3 *Bl. Com.* 407. 2 *Reeves' Hist. Eng. Law*, 98. See *Bract.* fol. 211. Used in the same sense without the preposition. *Cadere causa*; to fail in, or lose one's cause, to be cast. *Cic. De Orat.* i. 36. *Inst.* 4. 6. 33. *Cadere assisa*; to be nonsuited. *Fleta*, lib. 4, c. 15. Literally translated in Scotch law, to fall from. "To fall from a right," is to lose or forfeit it. 1 *Kames' Equity*, 228.

*Cadere in*. To fall into, to become liable to, to be the subject of. *Cadit donatio in partem*; the gift becomes the subject of division, (or *venit in divisionem*, goes into a common stock, for the purpose of making a general division.) *Bract.* fol. 22. *Cadere in assisam*; to be the subject of an assise, as an agreement or covenant; to be sued for in that form. *Id.* 213 b. The same as *incidere*. *Id.* 213. To become liable to an assise, as a person or party; to be suable in that form. *Possunt plures cadere in assisam, sicut unus*; several defendants may be included in an assise as well as one. *Id.* fol. 172. The same as *incidere*, which is more frequently used. *Id.* fol. 170 b, 171.

*Cadere in*. To fall into, to be changed or turned into. *Cadit assisa in juratam*; the assise is turned into a common jury. *Bract.* fol. 213 b. *Cadit assisa, nec est capienda ut assisa, sed vertitur in juratam*; the assise falls, nor is it to be taken as an assise, but it is turned into a jury. *Id.* fol. 192 b. *Cadit assisa et vertitur in juratam.* *Id.* fol. 210 b. *Cadit assisa in perambulationem*; the assise is turned into a perambulation.

*Id.* 180, 211 b. 1 *Reeves' Hist. Eng. Law*, 338.

CADIT. See *Cadere*.

CADUCUS, *Caduca*. L. Lat. [from *cadere*, to fall.] In the civil and old common law. Falling, fallen. *Caducus morbus*; the falling sickness. *Cowell.* *Caduca ligna*; fallen wood. *Spelman*, voc. *Cablicia*. *Glans caduca*; nuts or acorns that fall from the tree. *Dig.* 50. 16. 30. 4.

CADUCA. L. Lat. [from *cadere*, to fall.] In the civil law. Escheats, or escheated lands. *Co. Litt.* 13 a. Those that fall to the state. See *Escheat*.

CADUCARY. [from *caducus*, q. v.] Relating to escheat, forfeiture or confiscation. 2 *Bl. Com.* 245.

CADUS. L. Lat. A barrel. *Towns. Pl.* 173. *Decem cados olei.* *Bract.* fol. 35.

CÆDUA. Lat. [from *cadere*, to cut.] In the civil and old common law. Kept for cutting; intended or used to be cut. A term applied to wood. *Silva cædua est quæ in hoc habetur ut cæderetur*; *sylva cædua* is that kind of wood which is kept for the purpose of being cut. *Dig.* 50. 16. 30. According to Servius, it was that kind which, when cut down, grew up again from the trunks or roots. *Id.*

CALANGIUM, *Calangia*. L. Lat. [from Fr. *calanger*.] In old English law. A challenge; a claim or dispute. 2 *Mon. Angl.* 252. *Cowell.* *Blount.* *Spelman*, voc. *Calumnia*.

CALAPHATES. Gr. A ship's carpenter, or shipwright. *Molloy De Jur. Mar.* 243.

CALATA COMITIA. See *Comitia Calata*.

CALCARIA. L. Lat. Spurs. *Bract.* fol. 35.

CALCEATA, *Calcetum*. L. Lat. [Fr. *chaussee*.] In old law. A causeway, or causey; a path or road raised with earth and paved; (*agger, via strata.*) *Spelman.* *Cowell*, voc. *Calcea*.

CALCETUM. L. Lat. A causeway. *Reg. Orig.* 154. See *Calceata*.

CALCIFURNIUM. L. Lat. An oven

for burning lime, (*furnus ad coquendam calcem*;) a lime kiln. *Spelman*.

**CALEFAGIUM.** L. Lat. In old law. A right to take fuel yearly. *Cowell*. *Whishaw*.

**CALENDAR, Kalendar.** [L. Lat. *calendarium*, from *calendæ*, q. v.] The established division of time into years, months, weeks and days.

A table or register of such divisions. *Encyclop. Americ.* *Brande*.

**CALENDARIUM.** L. Lat. A calendar. See *Calendar*.

**CALENDAR (or Solar) MONTH.** A month computed according to the calendar, and containing thirty or thirty-one days, except February, which contains twenty-eight days, and in bissextile or leap year, twenty-nine. *Co. Litt.* 135 b. *Stat.* 16 *Car.* II. c. 7. *Com. Dig.* Ann. (B). 3 *Chitt. Gen. Pract.* 108. See *Month*.

**CALENDAR OF CAUSES.** In practice. A list of litigated causes, prepared by the clerks of courts of record, a short time previous to the commencement of each term, containing the title of each cause, the nature of the action, the date of the issue, and the names of the attorneys for the respective parties. It is intended for the use of the court and bar on the trial or hearing. In English practice it is termed the *list*, or *paper*. 2 *Tidd's Pr.* 818, 819. 1 *Id.* 504. In some of the United States it is called *docket*. See *Docket*.

**CALENDAR OF PRISONERS.** In English practice. A list kept by the sheriffs containing the names of all the prisoners in their custody, with the several judgments against each in the margin. *Staundf. Pl. Cor.* 182. 4 *Bl. Com.* 403.

**CALENDÆ, Kalendæ.** Lat. [from O. Lat. *calo*, Gr. *καλέω*, to call.] Calends. See *Calends*.

**CALENDS.** [Lat. *calendæ*.] The first day of the month in the Roman calendar; so termed from the custom of a priest *calling out*, or proclaiming to the people on that day, the month with the festivals occurring in it, and the time of the new moon. *Adam's Rom. Ant.* 355. *Encyclop. Americ.* 2 *Inst.* 675. *Cowell*.

**CALL.** In American land law. The requirement of a natural object, as a tree or

stream, to correspond with a description or map in a survey, patent or grant of land; the designation of a natural object as a landmark or boundary in patents, grants and surveys. Thus, a survey is said to "*call for*, as the place of beginning, a black oak on the state line." 2 *Binney's R.* 169. 2 *Penn. St. R.* 44. A grant is said to "*call for* two small chestnut oaks," "*to call for* a corner," &c. 3 *Peters' R.* 92—98. "The grant *calls to* be on the waters of Tygart valley." Marshall, C. J., *Id. ibid.* These are otherwise termed *locative calls*, (q. v.) The location and boundaries of a tract, as surveyed, must be according to the *calls* of the grant. See 5 *Howard's R.* 10. 10 *Wheaton's R.* 454.

**CALLING THE PLAINTIFF.** In practice. A formality practised in courts, on the trial of a cause before a jury, as preliminary to nonsuiting the plaintiff. It is usual in English practice, for a plaintiff, when he or his counsel perceives that he has not given evidence sufficient to maintain his issue, to be voluntarily non-suited, or to withdraw himself; whereupon the crier is ordered to *call the plaintiff*; and if neither he, nor any body for him, appears, he is non-suited, the jurors are discharged, the action is at an end, and the defendant shall recover his costs. 3 *Bl. Com.* 376. Hence the phrase has become synonymous with *nonsuiting* the plaintiff. "The plaintiff must be called;" that is, must be nonsuited. See the reports *passim*. The practice of calling the plaintiff to hear the verdict was dispensed with in the Supreme Court of New-York, in 1847. *S. C. Rules*, ed. 1847, R. 46.

**CALLING TO THE BAR.** In English practice. Conferring the dignity or degree of barrister at law upon a member of one of the Inns of court. *Holthouse*.

**CALUMNIA, Calumpnia.** L. Lat. In old English law and practice. A claim, or demand; (*vindicatio*, L. Lat. *clameus*.) *Spelman*. The demand of a right in anything; (*juris in re aliqua postulatio*.) *Id.*

A challenge. *Spelman. Reg. Orig.* 223, 224. *Co. Litt.* 155 b. *Crabb's Hist. Eng. Law*, 299.

**CALUMNIA.** Lat. In the civil law. Calumny, malice, or ill design; a false accusation, a malicious prosecution. *Inst.* 4. 16. 1. *Cooper's notes*.

*Calumnia jusrurandum*; the oath of calumny. An oath imposed upon the parties to a suit, that they did not sue or defend with the intention of calumniating, (*calum-*

*niandi animo*.) i. e. with a malicious design, but from a firm belief that they had a good cause. *Id. ibid.* The same oath, under the name of *juramentum calumniæ*, was formerly practised in the canon law, but is now disused. 4 *Reeves' Hist. Eng. Law*, 16. *Cooper's Justinian*, Notes, 649.

**CALUMNIARE**, *Calumpniare*. L. Lat. In old English law and practice. To claim or demand, (*vindicare, clamare*.) *Spelman*.

To object to. *Calumniata, calumpniata*; objected to. *Bract. fol. 257. 334.*

To challenge. *Ut omnes juratores in panello calumniare possit*; that he might be able to challenge all the jurors in the panel. *Reg. Orig. 223.* See *Stat. Westm. 2, c. 32. Co. Litt. 155 b.*

**CALUMNIARE**. Lat. In the civil law. To calumniate, or maliciously injure; to accuse falsely. *Inst. 4. 16. 1.* See *Calumnia*.

**CALUMPNIOSUS**. L. Lat. In old practice. That may be challenged or objected to; objectionable. *Bract. fol. 398 b.*

**CAMBIPARTIA**, *Cambipartita*. L. Lat. [from *campus*, a field, and *partiri*, to divide.] In old English law. Champerty. *Co. Litt. 368 b. Spelman, voc. Cambiparticeps.* See *Champerty, Campers*.

**CAMBIPARTICEPS**, *Cambipartitor*. L. Lat. (See *Cambipartia*.) A champertor; one who promotes, undertakes or maintains another's suit, in order to obtain a stipulated share of the land or other thing that may be recovered; (*ad campi partem, vel pro parte lucri habendum*.) *Stat. de Conspiratoribus, 33 Edw. III. Spelman.* See *Champertor*.

**CAMBIRE**. L. Lat. To change or exchange. *Cambire denarios. Ryl. Parl. 527. Towns. Pl. 58.*

**CAMBITORIA**. L. Lat. [from *ambium*, q. v.] Of, or relating to exchange. *Litteræ cambitoria*; a bill of exchange. *Towns. Pl. 58.*

**CAMBIUM**, *Escambium*. L. Lat. [Ital. *cambio*.] In old European law. Change or exchange; (*permutatio*.) *Molloy De Jur. Mar. 309, 313. Towns. Pl. 58.* See *Escambium, Chambium*.

A bill of exchange. *Per cambium intelligimus litteras solemnibus formula scriptas, quibus quis alterum solvi jubet presentanti*

*certam pecuniæ summam, sibi jam numeratam, suoque nomine satisfactionem promittit*; by exchange we mean a formal letter in writing, by which one orders another to pay to him who presents it, a certain sum of money, already received in value, and promises satisfaction in his own name. *Heinec. Elem. Jur. Camb. c. 1, § 9. Story on Bills, § 4.*

**CAMERA**. L. Lat. [Lat. *camera*, a vault, or arched roof; an upper gallery.] In old European law. A chamber; an apartment in a dwelling house. *Facio tibi aulam, ut tu facias mihi cameram*; I make you a hall, in consideration of your making me a chamber. *Bract. fol. 19.* *Camera dividitur ab aula*; a chamber is separated from a hall. *Id. fol. 76. Non debet exire cameram*; he ought not to go out of the chamber. *Id. fol. 357 b, c. 12. Reg. Jud. 13.*

A treasure chamber, or treasury; a chamber with a vaulted roof, for the keeping of the public treasure; (*locus in quem inferuntur mulctæ et thesaurus principis*.) *Spelman, voc. Cambellanus*. This is the definition of the feudists, and other early writers. *Locus in quem thesaurus colligitur. Zasius de Feudis, par. 4, num. 7. Testudo sive forniz. Onuphrius de interp. voc. Ecclesia, cited in Cowell, voc. Chamberlain.* Hence the modern vault, as a place of deposit for money. See *Camerarius, Chamberlain*.

A private treasury; a place for keeping private funds or monies; a coffer; personal funds, as distinguished from land. This meaning seems to be peculiar to the old English law. An annuity is distinguished from a rent, (although both are termed in Latin *annuus redditus*, q. v.) as issuing or payable *ex camera*, and not *ex tenemento*. *Bract. fol. 79 b, 180, 184, 203 b. Reg. Orig. 266.* See *Annuity*.

A crooked plat, or nook of ground. *Dufresne, cited in Cowell.* The editor of Cowell (A. D. 1701,) makes this the original meaning of the word, deriving it from the Germ. *kam*, or *kammer*, crooked. But *kammer* seems to have always denoted a vaulted chamber. *Encyclop. Americ. voc. Chamber.*

**CAMERARIUS**. L. Lat. [from *camera*, a chamber or treasury.] In old European law. A chamberlain; a keeper of the treasure chamber; a keeper of the public money; a treasurer. *Peregrinus de jure fisci, lib. 6, tit. 13, cited in Cowell, voc. Chamberlain.* *Camerarius dicitur a camera, i. e. testudine sive fornice, quia custodit*

*pecunias quæ in cameris præcipue reservantur.* *Onuphrius de interpr. voc. Ecclesias*, cited *ibid.* See *Spelman*, voc. *Cambellanus*. *Towns. Pl.* 48. Used in this sense in England, in the times of the Anglo Saxons. *Ealred in vit. S. Edw. Conf.* c. ii. p. 9, cited, *P. Cyclopædia*. It occurs also in the Domesday Survey. *Ibid.*

A bailiff or receiver. *Stat. Westm.* 2, c. 11. 2 *Inst.* 380.

**CAM. SCACC.** Abbreviation of *camera scaccarii*, (q. v.)

**CAMERA SCACCARII.** L. Lat. The chamber of the exchequer, the exchequer chamber. See *Exchequer Chamber*.

**CAMERA STELLATA.** L. Lat. The star chamber. See *Star Chamber*.

**CAMPANA.** L. Lat. A bell. *Spelman*.

**CAMPANARIUM,** *Campanile.* L. Lat. [from *campana*, q. v.] A belfry, bell tower or steeple; a place where bells are hung. *Spelman. Towns. Pl.* 191, 213.

**CAMPERS,** *Campipars.* L. Lat. [Fr. *champert*.] In old English statutes. A share or division of land, or other thing; champerty. *Nullus minister domini regis manuteneat placita vel querelas in curia sua, ad campertem inde habendum*; No servant of the king shall maintain pleas or complaints in his court, to have *champert* thereof. *Rot. Parl.* 21 *Edw. I.*, cited in *Blount*. This corresponds with the Fr. *ne a champert*, in the first English statute of champerty. *Stat. Westm.* 2, c. 49. 2 *Reeves' Hist. Eng. Law*, 212. See *Champerty*.

**CAMPFIGHT.** In old English law. The fighting of two champions (*campiones*;) or combatants in the field, (*campus*;) the judicial combat, or *duellum*. 3 *Inst.* 221. See *Acre-fight*.

**CAMPIO.** L. Lat. [from *campus*, q. v.] In feudal and old English law. A champion. *Bract. fol.* 344. *Spelman*, voc. *Campus*. One that striketh a legal campfight, or combat in another man's quarrel. 3 *Inst.* 221. See *Champion*. *Campio conductivus*; a hired champion. *Bract. fol.* 137 b.

**CAMPSORES.** L. Lat. [from *cambium*, exchange.] In old European law. Exchangers; Lombard or Italian merchants. 1 *Rob. Charles V.*, Appendix, Note xxx.

**CAMPUS.** Lat. [Fr. *champ*.] In old European law. An assembly of the people; so called from being anciently held in the open air, in some plain capable of containing a large number of persons. 1 *Rob. Charles V.*, Appendix, Note xxxviii.

**CAMPUS.** Lat. In feudal and old English law. A field, or plain. The field, ground or lists marked out for the combatants in the *duellum*, or trial by battle. *Hottoman. in verb. Feud. voc. Campio*.

The *duellum*, or combat itself; campfight. *Spelman. Cowell, voc. Champion*. See *Acre-fight*.

**CAMPUS MAIL.** L. Lat. The field of May. See *Champ de Mai*.

**CAMPUS MARTII.** L. Lat. The field of March. See *Champ de Mars*.

**CANCELLARIA.** L. Lat. [from *cancellarius*, q. v.] Chancery; the chancery; the court of chancery. 3 *Bl. Com.* 46. *Clerici de cancellaria*; the clerks of the chancery. *Stat. Westm.* 2, c. 24.

**CANCELLARIUS.** L. Lat. [from *cancelli*, q. v.] An officer in the lower Roman empire, otherwise called *scriba*, *notarius*, *graphiarius*, *secretarius*, *scriiniarius*, *a cancellis*, *a secretis*, *ab actis*, *a libellis*, *anti-graphus*, *logothetes*, and *caniclinus*. *Spelman*. A scribe, secretary, register, notary; a chancellor. See *Chancellor*.

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This term had originally no connection with courts of justice, or the cancelling of instruments. It first occurs in the history of Flavius Vopiscus, A. D. 287, and was the name of an officer of very humble rank, viz. an usher, or doorkeeper, who had the charge of the *cancelli*, or latticed doors leading to the presence chamber of the emperors. *Vopisc. Hist. Aug. Scrip.* vol. ii. 300. *Salmas. ad Id.* vol. ii. 796, note. *Ducange*, voc. *Cancellarius*. 1 *Wooddes. Lect.* 95. 1 *Gibbon's Rom. Emp.* (c. 12,) 193, note, (Am. ed.) The name was afterwards applied to the secretaries, scribes, notaries, or registers, who attended on the emperors and principal judges, and sat in a separate place, enclosed with a partition of *cancelli*, or lattice work, (*seclusi a turbæ molestiis inter cancellos agerent*.) *Spelman. Vopisc. Hist.* vol. ii. 797, 804. 1 *Wooddes. Lect. ub. sup.* See *Cancelli*. In the course of time, one of these *cancellarii* gained a precedence above the rest, and rose to a high degree of rank and power, as appears from the description given by *Cassiodorus*.



*Lib.* 11. *form.* 6. *Lib.* 12. *form.* 1. The ordinary part of his function at this time seems to have been to receive petitions and supplications addressed to the throne, and to frame and issue the imperial writs and mandates. 1 *Wooddes. Lect.* 96. From the Roman empire the name and office of *cancellarius*, or chancellor, passed to the Romish church; and were finally adopted by the courts of most of the states of Europe. *Id. ibid. Spelman.* 3 *Bl. Com.* 46. The first mention of the chancellor, as a public officer in England, is in the time of Edward the elder, about A. D. 920. *In gulph. apud Spelman.* 1 *Spence's Chancery*, 78, and notes.

**CANCELLARIUS.** L. Lat. A chancellor. *Bract.* fol. 338 b. 403 b. *Cancellarius et subthesaurarius scaccarii domini regis*; chancellor of the exchequer. *Towns. Pl.* 209. *Cancellarius ducatus et comitatus palatini domini regis Lanc'*; chancellor of the duchy of Lancaster. *Id.* 210.

**CANCELLATURA.** L. Lat. A cancelling. *Bract.* 398 b.

**CANCELLI.** Lat. Lattices, or windows made with bars laid cross-wise, one over another. Enclosures in courts, composed of such cross-bars, to keep off the press of the people, without obstructing their view of the court, (*ingressum prohibentes, non visum.*) *Spelman*, voc. *Cancellarius.* *Cassiodorus*, *lib.* 11. *form.* 6.

The use of *cancelli*, in the sense of a railing or enclosure in courts, occurs as early as the time of Cicero. *De Orat.* i. 12. *Spelman* says the bars of courts (*barrae*;) were formerly called *cancelli*, and the advocates who pleaded there *cancellarii*, (citing *Budaus*;) the space within the bar was called *cancellorum area*. See *Bar.* A *cancellis curia explodi*; to be expelled from the bar. *Spelman*, *ub. sup.* These *cancelli* are otherwise called by this writer *fenestræ partitiones*, partitions with windows. So *Cassiodorus* speaks of them as *lucida fores*, (transparent doors,) *claustra patentia*, (open barriers,) *fenestræ janua*, (windowed gates.) *Cassiod.* *ub. sup.*

**CANCELLING.** The defacing or obliterating a deed, will, or other instrument, so as to destroy its legal effect. This was anciently done, as it still frequently is, by drawing *lines diagonally* over it, and *crossing* them with other similar lines, in the form of *cancelli*, or lattice work. 2 *Bl. Com.* 309. See *Cancelli*. But it has been late-

ly held in England, under the statute 1 Vict. c. 26, that *cancelling* a will in this way does not amount to a revocation or destruction of it. 2 *Curt.* 458. *Worthington on Wills*, 560.

**CANFARA.** A trial by hot iron, formerly used in England. *Whishaw*.

**CANON.** [from Gr. *κανών*.] A law, rule or ordinance in general, and of the church in particular. *Jacob*.

**CANON.** In the civil law. A rent. 1 *Mackeld. Civ. Law*, 357, § 324. *Id.* 356, *Kaufman's note.* See *Emphyteusis*.

**CANON.** In English ecclesiastical law. A prebendary or member of a chapter. 1 *Bl. Com.* 382. 3 *Steph. Com.* 67. A person possessing a prebend or revenue allotted for the performance of divine service in a cathedral or collegiate church. *Encyclop. Amer.* By the late statutes, 3 & 4 Vict. c. 113, s. 1, it is provided that all the members of chapters, except the dean, in every cathedral and collegiate church in England, shall be styled *canons*. 3 *Steph. Com.* 67, note (m).

**CANONRY.** In English ecclesiastical law. An ecclesiastical benefice, attaching to the office of canon. *Holthouse.* 1 *Man. & Gr.* 625.

**CANON LAW.** [Lat. *Jus canonicum*, or *Corpus juris canonici*.] A collection of ecclesiastical constitutions for the regulation of the polity and discipline of the church of Rome, consisting for the most part of ordinances of general and provincial councils, decrees promulgated by the popes with the sanction of the cardinals, and decretal epistles and bulls of the popes. 1 *Bl. Com.* 82. *P. Cyclopædia*.

The *Corpus Juris Canonici* consists, in particular, of the collections called *Gratian's* decree, (*Decretum Gratiani*, q. v.); *Gregory's* decretals, (*Decretalia Gregorii Noni*, q. v.); the sixth decretal, or *Sext*, (*Sextus Decretalium*, q. v.); the *Clementine* constitutions, (*Clementinæ*, q. v.); and the *Extravagants* of John, (*Extravagantes Joannis*;) and his successors, (*Extravagantes communes*, qq. v.) 1 *Bl. Com.* 82. It was at first only a private collection, and was confirmed by Pope Gregory XIII. in the year 1580. 1 *Mackeld. Civ. Law*, 81, § 93, *Kaufman's note*.

**CANON LAW OF ENGLAND.** A kind of national canon law, composed of legatine

and provincial constitutions enacted in England prior to the reformation, and adapted to the exigencies of the English church and kingdom.\* 1 *Bl. Com.* 82. See *Legatine constitutions, Provincial constitutions*. At the time of the Reformation it was provided by statute 25 Henry VIII. c. 19, that a review should be had of the canon law; and till such review should be made, all canons, constitutions, ordinances and synodals provincial, being then already made, and not repugnant to the law of the land, or the king's prerogative, should still be used and executed. As no such review, however, was ever perfected, the authority of the canon law in England now depends upon this statute. 1 *Bl. Com.* 83. See 4 *Reeves' Hist. Eng. Law*, ch. xxiv. xxv. 5 *Co. Caudrey's case*. Lord Thurlow, C., 2 *Dick.* 716. 1 *Story's Eq. Jur.* § 279, note.

**CANONS OF INHERITANCE.** The legal rules by which inheritances are regulated, and according to which estates are transmitted by descent from the ancestor to the heir. 2 *Bl. Com.* 208. 1 *Steph. Com.* 359. 2 *Crabb's Real Prop.* 1015, § 2394, *et seq.* 4 *Kent's Com.* 374—412. 2 *Hilbard's Real Prop.* 194—208.

**CANTABR'.** An abbreviation of *Canabrigia*, or Cambridgeshire, in old English pleadings and records. *Towns. Pl.* 147.

**CANTEL.** [L. Lat. *cantellum*, velut *quantillum*.] In old English law. That which is added above measure; heaped measure. *Spelman. Blount.*

**CANTRED, Cantref, Cantrep, Kantref.** [L. Lat. *cantredus*, *cantaredus*; from Brit. *cant*, a hundred, and *tre*, a town.] A district containing a hundred villages; a hundred. *Spelman*, voc. *Cantredus*. In Wales, the counties were divided into *cantreds*, as in England into hundreds. *Cowell*, voc. *Cantred, Falco. Termes de la ley. Blount*, voc. *Kantref*.

**CAPACITY.** [Lat. *capacitas*, from *capax*, able to take.] Strictly, ability to take. The legal ability or power of an individual or corporation to do certain acts, as to give or take lands or other things; or to bring actions, &c.\* 2 *Bl. Com.* 290. *Termes de la ley. Cowell.* See *Story's Conf. Laws*, ch. iv.

**CAPAX.** Lat. [from *capere*, to take.] One who takes or holds. *Capaces*; takers or holders. *Bract.* fol. 67 b.

One who can take, hold or entertain; capable of. See *Doli capax*.

**CAPE.** Lat. (Take.) In old English practice. A judicial writ concerning lands or tenements, formerly in use in England, and so termed from the emphatic word with which it began:—*Cape in manum nostrum tertiam partem messuagii*, &c.; (Take into our hand the third part of a messuage, &c.) It was divided into *cape magnum*, or *grand cape*, which lay before appearance; and *cape parvum*, or *petit cape*, which lay after appearance. *Termes de la ley. Cowell. Reg. Jud.* 2, 2 b. See *Grand cape, Petit cape, Magnum cape, Parvum cape*.

**CAPE AD VALENTIAM.** L. Lat. (Take to the value.) A species of *cape magnum*, (*supra*), which issued in behalf of the tenant, where a vouchee made default, on the return of the summons against him, and the demandant recovered; the writ commanding the sheriff to take as much land of the vouchee as was equal to the value of the land in question. *Bract.* fol. 258 b, 299 b. *Old Nat. Brev.* 161, 162. *Cowell. Termes de la ley.* 1 *Reeves' Hist. Eng. Law*, 440, 441. *Reg. Jud.* 2. See *Vouchee*.

**CAPELLA.** L. Lat. A chapel. *Spelman. Cowell.*

**CAPELLARE, Capulare.** L. Lat. In old European law. To cut, break or tear off; (*incidere, frangere, radere*.) *Spelman.*

**CAPER.** Lat. To take. The Roman law made a distinction between this word, and *accipere*, (*aliud est capere, aliud accipere*); it not being properly applicable to cases where a restitution or re-delivery of the thing taken was contemplated; (*non videtur quis capere quod erit restitutus*.) *Dig.* 50. 16. 71.

**CAPIAS.** Lat. (You take—*Quod capias*; that you take.) In practice. A judicial writ in actions at common law, so termed from the emphatic word in it, when the proceedings were in Latin, commanding the sheriff to take or arrest the party named in it. *Præcipimus tibi quod capias A.*, &c. *Reg. Jud.* 1 b. The two principal kinds of *capias* are the *capias ad respondendum*, and the *capias ad satisfaciendum*, (qq. v.)

**CAPIAS AD AUDIENDUM JUDICIUM.** L. Lat. (You take—to hear judgment.) In English practice. A writ which is awarded and issued to bring in a defendant who has

been found guilty of a misdemeanor, to receive his judgment. 4 *Bl. Com.* 375. 4 *Steph. Com.* 436.

**CAPIAS AD RESPONDENDUM.** L. Lat. (You take—to answer.) In practice. A well known writ, (usually simply termed a *capias*,) by which actions at law are frequently commenced; and which commands the sheriff to *take* the defendant, and him safely keep, so that he may have his body before the court on a certain day, to *answer* the plaintiff in the action. 3 *Bl. Com.* 282. 1 *Tidd's Pr.* 128. *Arch. New. Pr.* 216. The form of this writ has been considerably modified in England by the Uniformity of Process Act, 2 Will. IV. c. 39; and it is now only issued after the suit has been actually commenced by summons, where an arrest of the defendant is required. *Stat. 1 & 2 Vict.* c. 110. *Chitt. Arch. Pr.* 461. *Wharton's Lex.*

The *capias*, in its original form ran thus; *Rex vicecomiti salutem. Præcipimus tibi quod CAPIAS A. si inventus fuerit in balliva tua, et eum salvo custodias, ita quod habeas corpus ejus coram justitiariis nostris apud Westmonasterium, (tali die,) AD RESPONDENDUM B. de placito quod, &c. Et habeas ibi hoc breve. Teste, &c. Reg. Jud.* 1 b. The modern English writ was, down to a recent period, a literal translation of this form; and, with some modifications, it has generally been adopted in American practice.

The *capias* was originally called a *habeas corpus*, from these words used in it. 2 *Reeves' Hist. Eng. Law*, 439.

**CAPIAS AD SATISFACIENDUM.** L. Lat. (You take—to satisfy.) In practice. A writ of execution, (usually termed, for brevity, a *ca. sa.*) which a party may issue after having recovered judgment against another in certain actions at law. It commands the sheriff to *take* the party named, and keep him safely, so that he may have his body before the court on a certain day, to *satisfy* the party by whom it is issued, the damages or debt and damages recovered by the judgment. Its effect is to deprive the party taken of his liberty until he makes the satisfaction awarded. 3 *Bl. Com.* 414, 415. 2 *Tidd's Pr.* 993, 1025. *Litt. sect.* 504. *Co. Litt.* 289 a.

The *ca. sa.* in its original form, ran as follows: *Rex vic' salutem. Præcipimus tibi quod CAPIAS J. de C. et eum salvo custodias, ita quod habeas corpus ejus coram justitiariis nostris apud Westmonasterium, (tali die,) AD SATISFACIENDUM, G. de K. tam de viginti solidis quos idem G. in curia*

*nostra, &c., recuperavit versus eum, quam de viginti solidis qui ei, in eadem curia nostra, adjudicata fuerunt pro damnis suis quæ habuit occasione detentionis debiti prædicti. Et habeas ibi hoc breve. Teste, &c. Reg. Jud.* 31. This has been very closely followed in the modern forms of *ca. sa.* in debt.

**CAPIAS IN WITHERNAM.** L. Lat. (You take in withernam.) In practice. A writ which lies where cattle or goods distrained have been driven or carried out of the country, so that the sheriff cannot take them on a writ of replevin; commanding him to *take* other cattle or goods of the distrainer, as a second or reciprocal distress, (*withernam*, or *repetitum namium*, signifying a second taking,) in lieu of the distress formerly taken and withheld. *Reg. Orig.* 82, 83. *F. N. B.* 69 A. 3 *Bl. Com.* 148, 413, 129. 3 *Steph. Com.* 522. See *Withernam*.

**CAPIAS PRO FINE.** L. Lat. (You take—for the fine.) In English practice. A writ by which a party condemned to pay a *fine* to the king, was *taken* and imprisoned until he paid it. *Cro. Eliz.* 170. 5 *Co.* 89. See *Capiatur pro fine*. This writ was disallowed by statute 5 & 6 W. & M. c. 12, in actions of trespass, ejectment, assault and false imprisonment. 3 *Bl. Com.* 398. It seems however to be still used in criminal cases. *Cole on Informations*, 97, Appendix A., No. 47.

**CAPIAS UTLAGATUM.** L. Lat. (You take the outlaw.) In English practice. A writ which lies against a person who has been *outlawed* in an action, by which the sheriff is commanded to *take* him, and keep him in custody until the day of the return, and then present him to the court, there to be dealt with for his contempt. *Reg. Orig.* 138 b. 3 *Bl. Com.* 284, and Appendix No. iii. sect. 2. 3 *Steph. Com.* 569.

**CAPIATUR PRO FINE.** L. Lat. (Let him be taken for the fine.) In English practice. A clause inserted at the end of old judgment records in actions of debt, where the defendant denied his deed, and it was found against him upon his false plea, and the jury were troubled with the trial of it. *Cro. Jac.* 64.

The same form was used in actions of replevin, trespass, ejectment, assault and false imprisonment; the judgment ordering the party to be taken until he paid a fine to the king for the public misdemeanor which

was considered as coupled with the private injury in those cases. 3 *Bl. Com.* 398. Since the statute 5 & 6 W. & M. c. 12, this form has been disused. *Id. ibid.* 3 *Steph. Com.* 636, note (s).

**CAPITA.** Lat. (plur. of *Caput*, q. v.) Heads, and figuratively, entire bodies, whether of persons or animals. *Spelman.*

Persons individually considered, without relation to others, (polls); as distinguished from *stirpes* or stocks of descent. The term in this sense, making part of the common phrases, *in capita*, *per capita*, is derived from the civil law. *Inst.* 3. 1. 6. *Id.* 3. 2. 4. *Nov.* 118, c. 3, *ad finem.* See *Caput*, *In capita*, *Per capita*.

Heads of cattle. *Inst.* 2. 1. 38. *Id.* 2. 20. 18. *Bract.* fol. 374 b. Hence, according to *Spelman*, *capitalia*, contracted to *capitalia* and *catalia*; whence *catalla*, chattels or goods, generally. *Spelman*, voc. *Capital*. See *Capitalia*.

**CAPITAL.** See *Capitale*.

**CAPITAL.** [from *caput*, head or life.] Relating to, or affecting the life of a person. A capital crime or felony is a crime or felony punishable with death, (*quod ultimum inducit supplicium.*) *Bract.* fol. 101 b.

**CAPITALE, Captale.** L. Lat. [plur. *capitalia*, *capitalia*, from *caput*, head.] In old European law. A beast or animal, considered as an article of property; hence according to *Spelman*, the term chattel. *Reddant \* \* decimas, tam in viventi capitali, quam in mortuis fructibus terræ*; they shall pay tithes as well in the living animal as in the dead fruits of the earth. *Fragm. LL. Aethelstani, apud Spelman.* *Si ceorl aliquod captale furetur, &c.*; if a churl steal any beast. *LL. Inæ*, c. 58, *ibid.* *Si \* \* introeat alicujus vicini sui capitale per suum apertum, &c.*; if any neighbor's beast enter through the opening left by himself, &c. *LL. Inæ*, c. 40, *apud Spelman*, voc. *Curtillum*.

**CAPITALIA, Capitalia.** L. Lat. [plur. of *capitale*, *captale*, q. v.] In old European law. Any kind of goods moveable or immoveable, but properly that kind which consists in animals, from whose heads (*capita*) the things themselves were sometimes called *capita*, sometimes *capitalia*, and by contraction, *capitalia* and *catalia*; whence the law term *catalla*, chattels. *Spelman.* *Dominica capitalia celata pro furto habentur*; the concealing of the lord's beasts,

or chattels, shall be considered as theft. *LL. Hen. I. c. 14.*

**CAPITALIS.** Lat. [from *caput*, head or life.] Capital; affecting or involving life. *Crimen capitale*; a capital crime. *Bract.* fol. 120 b, 101 b. In the civil law, offences punishable by the loss of civil rights, (*amissio civitatis*), interdiction of fire and water, banishment (*deportatio*), or labor in the mines (*metallum*) were also termed capital. *Dig.* 50. 16. 103. *Inst.* 4. 18. 2.

**CAPITALIS.** L. Lat. [from *caput*, head or chief.] In old English law. Chief, principal; at the head. A term applied to persons, places, judicial proceedings, and some kinds of property.

*Capitalis plegius*; a chief pledge; a head borough. *Towns. Pl.* 35. *Capitalis baro*, (q. v.); chief baron. *Capitalis justitiarius*, (q. v.); chief justiciary or justice.

*Capitalis terra*; a head-land. A piece of land lying at the head of other land. See *Forera*. *Capitale messuagium*; a chief messuage. *Bract.* fol. 76 b. 96.

*Capitale placitum*; a principal plea. *Bract.* fol. 366. See *Dig.* 50. 16. 103.

*Capitalis redditus*; a chief rent, (q. v.)

**CAPITALIS BARO.** L. Lat. Chief baron. *Capitalis baro scaccarii domini regis*; chief baron of the exchequer. *Towns. Pl.* 211.

**CAPITALIS JUSTITIARIUS.** L. Lat. Chief justiciar or justiciary; chief justice. *Capitalis* (or *summus*) *justitiarius totius Angliæ*; chief justice of all England. The title of the presiding justice in the court of *Aula Regis*. 3 *Bl. Com.* 38. 1 *Reeves' Hist. Eng. Law*, 48. This title ceased in the fifty second year of Henry III. 2 *Id.* 91.

*Capitalis justitiarius ad placita coram rege tenenda*; chief justice for holding pleas before the king. The title of the chief justice of the King's Bench, first assumed in the latter part of the reign of Henry III. 2 *Reeves' Hist. E. L.* 91. 285.

*Capitalis justitiarius banci*, or *de banco*; chief justice of the bench. The title of the chief justice of the (now) Court of Common Pleas, first mentioned in the first year of Edward I. 2 *Reeves' Hist. E. L.* 91. *sup.* *Crabb's Hist. E. Law*, 146. See *Justiciar*, *Chief Justiciar*. The title *capitalis* seems to have originally been confined to the justices of the *Aula Regis*, and the *Bancus*. *Bract.* fol. 108, 108 b.

**CAPITANEUS.** L. Lat. [from *caput*,

a head.] In feudal law. One who held an estate or dignity in *capite*, that is, immediately from the king; a chief lord or baron of the king, (*baro regis vel regni*.) *Spelman*. See *Caput*.

A leader; a captain. *Spelman*. *Towns*. Pl. 214, 210.

A naval commander. *Reg. Orig.* 191. *Capitaneus et custos maris*; captain and warden of the sea. The title given to a naval officer, A. D. 1264. *Chart.* 48 *Hen.* III., *apud Spelman*, voc. *Admiralius*.

**CAPITARE.** L. Lat. [from *caput*, head.] In old law and surveys. To head, front or abut; to touch at the head, or end. *Tenant octo acras juxta Goreswall, capitantes ad prædictum wallum*; they hold eight acres near Goreswall, heading to (or on) the said wall. *Cowell*, voc. *Abbuttals*. \* \* *unam peciam pruti apud Langmede, quæ capitat ad regiam stratam et laterat ad terras hæredum Nicholai de Sandwyco militis*; one piece of meadow which heads on the highway, and sides [i. e. borders or touches on the side,] on the lands of the heirs of Nicholas de Sandwich, knight. *MS. Dat.* A. D. 1317, cited in *Cowell*, voc. *Laterare*.

**CAPITE.** See *Caput*, *In capite*.

**CAPITILITIUM.** L. Lat. [from *caput*, head or poll.] In old law. Poll money. *Blount*. *Whishaw*.

**CAPITIS DIMINUTIO.** Lat. In the civil law. The loss of a *status* or civil qualification; the change of a man's former condition, (*prioris status mutatio*.) *Inst.* 1. 16. pr. 1 *Mackeld. Civ. Law*, 131, § 121. This was of three kinds. See *Caput, Status*.

*Capitis diminutio maxima*; the highest kind of *capitis diminutio*, when liberty was lost, which carried with it citizenship (*civitas*), and family, (*familia*.) *Inst.* 1. 16. 1. *Dig.* 4. 5. 11.

*Capitis diminutio media*; the less or middle kind of *capitis diminutio*, when the right of citizenship was lost, (which carried with it family) but liberty was retained. *Inst.* 1. 16. 2. *Dig.* 4. 5. 11.

*Capitis diminutio minima*; the least or lowest kind of *capitis diminutio*, when liberty and citizenship were retained, but family or family relations, (otherwise called *status hominis*,) underwent a change, as by arrogation of a person *sui juris*, or emancipation of a *filius-familias*. *Inst.* 1. 16. 3. *Dig.* 4. 5. 11. 1 *Mackeld. Civ. Law*, 131, § 121.

**CAPITULA.** L. Lat. [plur. of *capitulum*, q. v.] In old ecclesiastical law. Collections of laws or ordinances, (*legum canones*), drawn up under certain divisions or heads, (*constitutorum capita*, i. e. *summas continentia*.) *Spelman*.

Chapters or assemblies of ecclesiastical persons. See *Capitulum*.

**CAPITULA ITINERIS.** L. Lat. [L. Fr. *chapitres de eyre*.] In old English practice. Chapters of the eyre. Chapters, articles, heads or schedules of inquiry, delivered to the justices itinerant, (*in itinere, in eyre*), in behalf of the crown, for their direction, and read or given in charge by them to the juries from the various hundreds, at the opening of the eyre. *Bract.* fol. 116, 109. *Britt.* c. 2, 3. *Fleta*, lib. 1, c. 20. 1 *Reeves' Hist. Eng. Law*, 52, 201. 2 *Id.* 4, 5.

Bracton has given the form of one of these *capitula* at length. It consists of fifty heads, embracing every variety of crime and misdemeanor to which the attention of the jury could be directed. *Bract.* fol. 116—118. According to Britton, a copy of these chapters had to be delivered to each dozen or twelve, as he calls the jury; (*a chescun dozeyne soient les chapitres severaument liveres*), and upon these their *presentments* were made, each head being separately answered to. *Britt.* c. 2. *Bract.* fol. 116. Hence doubtless has originated the modern practice of charging the grand jury at the opening of the higher criminal courts. The records of these inquisitions have been preserved in the Rolls officially denominated "*the Hundred Rolls*." *Hubback's Evid. of Succession*, 603.

**CAPITULA CORONÆ.** L. Lat. Chapters of the crown. Chapters or heads of inquiry, resembling the *capitula itineris*, (q. v.) but of a more minute character, delivered in the year 1194, 5 Ric. I. 1 *Reeves' Hist. Eng. Law*, 201. *Crabb's Hist. E. L.* 130.

**CAPITULA DE JUDÆIS.** L. Lat. Chapters or articles concerning the Jews. Articles of inquiry relating to the Jews, delivered to the justices itinerant in the reign of Richard I. directing them to adjudge what revenue should be paid by the Jews to the king for protection, license to trade and the like. *Hoveden*, 423. 2 *Bl. Com.* 343. *Crabb's Hist. Eng. Law*, 131.

**CAPITULARY.** [L. Lat. *capitulare*, from *capitulum*, a chapter.] A collection

of chapters, (*capitulorum congeries*); a decree or ordinance. *Spelman*.

In feudal law, the capitularies (*capitularia*), were a collection of laws, divided into short chapters or heads, promulgated by Charlemagne and other kings of the Franks. The earliest collection of them is that of Angersize, Abbot of Fontenelles, published A. D. 827. Three books were added by Benedict the Levite (that is, the deacon) of the church of Mentz. The best edition is that of Baluze in 1677; the latest is by De Chiniac, Paris, 1780, Basle, 1796. *Butler's Note* 77, Lib. 3. *Co. Litt.* 1 *Robertson's Charles V.* Appendix, Note xxxix. *Esprit des Lois*, liv. 28. c. 9.

**CAPITULUM.** L. Lat. [dimin. of *caput*, a head.] A chapter; a small head or division. *Spelman. Termes de la ley. Cowell, voc. Chapter.*

An assembly of ecclesiastical persons. *Bract.* fol. 12, 16. See *Chapter*.

**CAPTIO.** Lat. [from *capere*, to take.] In old English law and practice. A taking or seizure of a thing, as an animal. *Bract.* fol. 156. *Bene cognoscit captionem*; he well avows the taking. 1 *Salk.* 3.

A taking or seizure of land. *Dies captionis indorsari debet in tergo brevis*; the day of the taking ought to be indorsed on the back of the writ. *Bract.* fol. 365 b.

A taking or arrest of a person. *Reg. Orig.* 278 b. *Bract.* fol. 145 b.

A taking or holding of a court. *Captio assise*; the taking of the assise. *Bract.* fol. 111, 202 b.

A taking or receiving. *Homagii captio*; taking of homage. *Id.* fol. 16.

**CAPTION.** [Lat. *captio*, q. v.] In practice. A taking, seizure or arrest of a person. 2 *Salk.* 498. The word in this sense is now obsolete.

A certificate of the taking of a commission, subscribed by the commissioners. *Blount.*

The title or heading of a legal document, as a bill in equity, an indictment, &c. 1 *Ld. Raym.* 548. *Marshall, C. J.*, 8 *Peters' R.* 149. *Wharton's Am. Crim. Law*, 63. The word in this sense seems rather to be derived from *caput*.

**CAPTOR.** L. Lat. In old English law. A taker, a lessee. *Towns. Pl.* 37.

**CAPTOR.** L. Lat. & Eng. [from Lat. *capere*, to take.] In international law. One who takes or seizes property in time of war; one who takes the property of an

enemy. In a stricter sense, one who takes a prize at sea. 2 *Bl. Com.* 401. 1 *Kent's Com.* 86, 96, 103.

**CAPTURE.** [Lat. *captura*, from *capere*, to take.] In international law. A taking or seizure of the goods of an enemy; a taking of prizes in time of war, particularly at sea. 2 *Bl. Com.* 401, 402. 2 *Steph. Com.* 79, 80. 1 *Kent's Com.* 91, 92.

**CAPUT.** Lat. A head; the head of a person; the whole person; the life of a person. See *Æstimatio capitis*.

In the civil law. A person or individual. *In capite libero*; in, or over a free person. *Inst.* 1. 13. 1. *Omnis noxalis actio caput sequitur*; every noxal action follows the person. *Id.* 4. 8. 5.

A certain personal qualification, otherwise called *status*, which formed the indispensable requisite to the capacity for civil rights among the Romans; and of which there were three kinds; freedom, citizenship and family. 1 *Mackeld. Civ. Law*, 129, § 119. *Inst.* 1. 16. pr. et seq. *Dig.* 4. 5. 11. See *Capitis diminutio*.

In feudal law. A head or chief; the king as head of the state. See *Caput, principium et finis*. To hold lands in *capite*, was to hold directly from the king, as the sovereign lord; (*omnium terrarum capite*.) *Spelman. Blount, voc. Capite. Caput comitatûs*; the head or chief of the county; one of the ancient titles of the earl. *Gillb. C. Pleas*, 2. *Caput feudi vel terræ*; the chief lord of a fee. *Spelman, Feuds*, c. 4.

In old English law. A head or upper end of a place. *Caput villæ*; the head of the town. *Cowell. Blount. Caput terræ*; the head or upper end of a piece of land.

A chief or principal place, house or messuage, (*capitale messuagium*.) *Caput comitatûs*; the chief seat of an earl. *Bract.* fol. 76 b. *Caput baroniæ*; the castle, manor house, or chief seat of a baron. *Id. ibid.* *Id.* fol. 93. *Blount. Spelman, voc. Baronia, Baro.*

A head or beginning. *Caput anni*; the beginning of the year; the new year's day. *Cowell.*

**CAPUT, PRINCIPIUM ET FINIS.** Lat. The head, beginning and end. A term applied in English law to the king, as head of parliament. 4 *Inst.* 3. 1 *Bl. Com.* 188.

**CAPUT LUPINUM.** L. Lat. [Sax. *wulfesheofod*.] In Saxon and old English law. A wolf's head. An outlawed felon was anciently so called, because he might be slain or knocked in the head, like a wolf, by any

one that should meet him. *Bract. fol. 128 b, 134. Mirr. c. 4, sect. 4. Co. Litt. 128 b. 4 Bl. Com. 320.* That is to say, he might be killed, if he resisted being taken, or endeavored to escape, but if he did neither, whoever killed him was bound to answer for him, as for any other person. This important explanation, given by Bracton, has been overlooked by some later writers. *Bract. ub. sup. 2 Reeves' Hist. Eng. Law, 20.*

**CAPUTAGIUM.** L. Lat. [from *caput*, head.] In old English law. Head, or poll money, or the payment of it. *Cowell. Blount.* By some considered the same with *chevagium*, (q. v.) *Cowell.*

**CAPUTIA.** Plural of *caputium*, (q. v.)

**CAPUTIUM,** *Capucium.* L. Lat. [from *caput*, head.] In old English law. A head of land; a headland. *Cowell, voc. Buttum.*

**CARCANNUM.** L. Lat. [from Sax. *carcarne*.] In old English law. A prison or work house. *LL. Canuti, c. 62, apud Spelman.*

**CARCARE.** L. Lat. In old English law. To load; to load a vessel, (*in navibus carcane*.) *Reg. Orig. 279. Carcare et discarcare*; to load and discharge. *Towns. Pl. 59. Cowell, voc. Cartatus. See Carricare.*

*Carcata*; freighted. *Pryn. 112. Towns. Pl. ub. sup. Cartata. Cowell.*

*Carcatio*; lading. *Carcationes*; loadings. *Towns. Pl. 226.*

**CARCER.** Lat. A prison or gaol. Strictly, a place of detention and safe keeping, and not of punishment.

*Carcer ad homines custodiendos, non ad puniendos, dari debet*; a prison should be used for keeping persons, not for punishing them. *Co. Litt. 260 a.* This sentence is taken from Bracton with a slight alteration. *Carcer ad continendos et non puniendos haberi debeat. Bract. fol. 105. 2 Mason's R. 516. See Prison, Gaol.*

**CARECTA,** *Carrecta.* L. Lat. [from Fr. *charret*, dimin. of *char*, from Lat. *carrum*, a car, according to Spelman; or according to Blount, from Sax. *cret*.] In old English law. A cart. *Magna Charta, c. 21. Reg. Orig. 281 b. Bract. fol. 217 b, 232.* A vehicle distinguished from both *currus*, and *carrum*. *Id. fol. 168. Vestigia malefactorum sunt sequenda per ductum carectæ, passus equorum, et vestigia hominum, et alio*

*modo*; the traces of the malefactors are to be pursued by the wheel tracks of carts, the hoof-prints of horses, the footsteps of men, and other ways. *Id. fol. 121 b.*

*Carectarius*; a carter. *Reg. Orig. 190.*

*Carectata*; a cart load. *2 Mon. Angl. 340. Cowell. Blount.*

**CARENA,** *Carina, Carrena.* L. Lat. [from Fr. *quarante*, forty.] In old ecclesiastical law. A period of forty days. Of the same meaning as *quarentena* (Fr. *quarantaine*;) quarantine. *Spelman. See Quarantine.*

**CARGO.** [Fr. *cargaison*; Span. *cargazon*.] In mercantile law. The load or lading of a vessel; goods and merchandize put on board a ship to be carried, (*merces in navi vehendæ*) to a certain port. This term is considered, both in English and American law, as applying to goods only, and does not include live animals, or persons. *4 Pick. R. 429. 2 Gill & Johns. 136. 7 Man. & Gr. 744, 736, note. See 9 Metcalf, 354.*

**CARIAGIUM.** L. Lat. [from *cariare*, (q. v.); L. Fr. *cariage*.] In old English law. Carriage; the carrying of goods or other things for the king. *Nullus vicecomes—capiat equos, vel carectas alicujus, pro cariagio faciendo*; no sheriff shall take the horses or carts of any person, to make carriage. *Magna Charta, c. 21.* A similar provision was contained in the statute of Westminster 1, c. 1. *Nul preigne chivalx, bofes, chares, ne charets, neifes, ne bateux, ne auter choses affaire cariage*; no person shall take horses, oxen, ploughs, carts, ships or boats, or other things to make carriage.

**CARIARE.** L. Lat. In old English law. To carry. *Reg. Orig. 46 b. Cariare et recariare*; to carry and re-carry. *Id. 127. Cariavit*; he carried. *Id. 110. Ad carinandum*; to carry, for carrying. *Id. ibid. 127.*

**CARNISPRIVIUM.** L. Lat. Shrovetide. *Towns. Pl. 43.*

**CARRETA,** *Carrecta.* L. Lat. In old English law. A carriage, cart or wain load. *Cowell. Blount.*

**CARRICARE.** L. Lat. [from Ital. *carrico*, a load, or Lat. *carrum*, a car.] In old European law. To load; to carry any thing on a car or cart. *Spelman.*

**CARRIER.** See *Common carrier.*

**CARRUM**, *Carrus*. Lat. A waggon or wain; a four-wheeled vehicle. *Bract.* fol. 168.

**CARTA**, *Charta*. Lat. A charter, deed or writing. *Carta non est nisi vestimentum donationis*; the deed is nothing but the clothing of the gift. *Staundf. J., Plouv.* 160. *Carta partita de affectamento*; a charter-party of affreightment. *Towns. Pl.* 224. *Carta perdonationis*; a charter of pardon. *Reg. Orig.* 288, 312. See *Charta*.

**CART BOTE**. Wood or timber which a tenant is allowed by law, to take from an estate, for the purpose of repairing instruments, [including necessary vehicles,] of husbandry. 2 *Bl. Com.* 35. See *Bote*, *Plough bote*.

**CARTEL**, *Chartel*. An instrument or writing for settling the exchange of prisoners of war. See *Chartel*.

**CARTEL SHIP**. In international law. A ship of truce; a ship or vessel commissioned in time of war, for the purpose of effecting the exchange of prisoners, or carrying proposals of any kind between belligerent powers; and which is privileged from capture. *Tomlins.* 1 *Kent's Com.* 68. *Brande*.

**CARUA**. L. Lat. [L. Fr. *carue*, *chare*.] In old English law. A plough. More commonly written *caruca*, (q. v.) *Spelman.* *Caruagium*; caruage or carvage. *Bract.* fol. 37. See *Carucage*.

**CARUCA**. L. Lat. [See *Carua*.] In old English law. A plough. *Magna Charta*, c. 5. *Bract.* fol. 40. *Spelman*, voc. *Carua*. The same as *soca*. *Litt.* sect. 119.

A car or cart, (*carruca*.) *Towns. Pl.* 198, 239, 59. 1 *Ld. Raym.* 75. But this is rather the classical meaning. *Spelman*, voc. *Carua*. *Sueton. Nero*, 30.

*Carucagium*; carucage, caruage, or carvage. See *Carucare*.

**CARUCAGE**. [L. Lat. *carucagium*, from *caruca*, a plough.] In old English law. A kind of tax or tribute anciently imposed upon every plough, (*carue* or plough land) for the public service. *Spelman*, voc. *Carua*. Called by Bracton, (fol. 37,) *caruagium*; by other writers *caruage*, and *carvage*. *Cowell. Blount.* voc. *Carucata. Termes de la ley*.

**CARUCARIUS**. L. Lat. [from *caruca*,

a plough.] In old English law. A ploughman. *Reg. Orig.* 190.

**CARUCATA**. L. Lat. [from *caruca*, a plough.] In old English law. A carucate, or carve of land; a plough-land. A quantity of land containing as much as might be tilled by one plough in a year and a day. *Reg. Orig.* 1 b. *Co. Litt.* 5 a, 69 a. *Skene de Verb. Signif. Blount.* voc. *Carucate*. By some said to be one hundred acres. *Blount*. But probably of no fixed quantity. *Thel. Dig.* lib. 8, c. 12. See *Carve*, *Ploughland*.

A team or draught of oxen, (*carucata boum*), for drawing or ploughing. *Cowell. Blount*.

A cart load. *Blount*. Perhaps a corruption of *carecta*, *carreta*, or *carectata*, (qq. v.)

*Carucatarius*; one who held land in carvage, that is, in socage, or plough tenure. *Cowell. Kennett's Par. Ant.* 354, cited *ibid*.

**CARUE**. L. Fr. A carve (of land); a ploughland. *Britt.* c. 84.

**CARVAGE**. The same as carucage, (q. v.) *Cowell. Blount*, voc. *Carucata*.

**CARVE**. [L. Lat. *carua*, *carucata*, L. Fr. *carue*.] In old English law. A carucate or ploughland. *Stat.* 28 *Edw. I.* See *Carucata*, *Ploughland*.

**CAS**. Fr. Case; a, or the case; an event or occurrence. *En ceo cas et en cas semblables*; in this case and the like cases. *Britt.* c. 75. *Si cas aveigne*; if the case happen. *Id. ibid*.

**CAS FORTUIT**. Fr. In the law of insurance. A fortuitous event; an inevitable accident. 3 *Kent's Com.* 300. See *Casus fortuitus*.

**CASA**. Ital. & L. Lat. In old European law. A house. *LL. Longob.* lib. 1, tit. 18, l. 1. *Id.* lib. 2, tit. 17, l. 1. *Spelman*.

**CASATA**, *Cassata*. L. Lat. [from *casa*, q. v.] A house with land sufficient for the support of one family. Otherwise called *hida*, a hide of land, and by Bede, *familia*. *Spelman*, voc. *Casa*.

**CASATUS**, *Cassatus*. L. Lat. [from *casa*, q. v.] A vassal or feudal tenant possessing a *casata*, (q. v.); that is, having a house, household, and property of his own, (*suam familiam, suum peculium*.) The



*casati*, or *cassati* embraced both bond and free tenants engaged in husbandry, (*vassalli colonici*.) *Spelman*, voc. *Casa*.

The ceorls mentioned in the later Anglo-Saxon charters are sometimes so named. *Cart. Offæ*, A. D. 780. 1 *Spence's Chancery*, 50, and notes (i), (k), *ibid*.

**CASAMENTUM.** L. Lat. [from *casa*, q. v.] The land held by a vassal or tenant; his holding or tenement, (*territorium vassalli, tenementum*.) *Spelman*. The same as *casata*, (q. v.) •

**CASE.** A suit or action; a cause. The Lat. *casus* had formerly the same meaning. *Bract*. fol. 301 b.

A *case*, in the sense of the constitution of the United States, (Art. III. Sect. II.) is a suit in law or equity, and arises when some subject, touching the constitution, laws or treaties of the United States, is submitted to the courts by a party who asserts his rights in the form prescribed by law. 3 *Story on Const.* 507. See 9 *Wheaton's R.* 819. 9 *Peters' R.* 224.

**CASE**, [Lat. *casus*, Fr. *cas*.], or **TRESPASS ON THE CASE**. In practice. A form of personal action *ex delicto*, less ancient than the other forms, invented under the authority of the statute of Westminster 2, (13 Edw. I.) c. 24, as a remedy for injuries to which the older forms were not adapted, and intended to supply the defect which in this respect was found to exist in the original scheme of personal actions. 3 *Steph. Com.* 461. *Steph. Pl.* 6, 16. (Am. ed. 1824.) It received the name of *case* from the circumstance of the plaintiff's whole *case* or cause of complaint being set forth at length in the original writ, contrary to the usual practice in those formulæ. *Reg. Orig.* 105, 106. 3 *Bl. Com.* 122. It was called *trespass* on the case, because it was devised upon the analogy of the old form of *trespass*. 3 *Steph. Com. ub. sup.* The first example in the books of the use of this action, or rather the earliest reported case in which it is mentioned, occurs in the reign of Edward III. 22 *Ass.* 41. 3 *Reeves' Hist. Eng. Law*, 89. See *Id.* 243, 391. And see 1 *Spence's Chancery*, 237—243.

This action is very comprehensive in its scope, and may be said to lie in every case where damages are claimed for an injury to person or property, not falling within the compass of the other forms. 3 *Steph. Com.* 462. 3 *Wooddes. Lect.* 88—119. It is the peculiar and appropriate remedy for injuries committed without force, and where the damage sustained is only consequential.

3 *Bl. Com.* 122, 123. See further as to this action, and the particular cases in which it lies, 1 *Chitt. Pl.* 132—145. *U. S. Digest*, Action upon the case, I., and *Supplement*, h. t. *U. S. Digest*, 1847, 1848, h. t.

**CASE.** In practice. A written statement of facts drawn up in a certain form, and intended to be submitted to a court of law for its opinion or judgment. There are various kinds of cases, as *cases reserved* on the trial of a cause, *cases agreed on* without trial, and *cases made* to move for a new trial. See *infra*.

**CASE AGREED ON.** A statement of facts in writing, agreed upon between the parties to an action, and submitted to the court without trial, in order to obtain an opinion or decision upon the points of law arising on such facts. This is sometimes called a *case stated*. 3 *Wharton's R.* 143. 8 *Serg. & R.* 529.

In England, by the recent statute 3 & 4 Will. IV. c. 42, s. 25, the parties are allowed to frame a case of this kind immediately after issue joined, and bring it at once before the court in banc for its decision, in order to avoid the expense and delay of a trial. 3 *Steph. Com.* 621.

**CASE RESERVED, OR MADE.** A statement in writing of the facts proved on the trial of a cause, drawn up and settled by the attorneys and counsel for the respective parties under the supervision of the judge, for the purpose of having certain points of law, which arose at the trial, and could not then be satisfactorily decided, determined upon full argument before the court in banc.\* This is otherwise called a *special case*; and it is usual for the parties, where the law of the case is doubtful, to agree that the jury shall find a general verdict for the plaintiff, subject to the opinion of the court upon such a *case to be made*; instead of obtaining from the jury a special verdict. 3 *Bl. Com.* 378. 3 *Steph. Com.* 621. *Steph. Pl.* 92, 93. 1 *Arch. Pr.* 216. 1 *Burr. Pr.* 242, 463. See *Special verdict*.

Lord Mansfield said, in *Luke v. Lyde*, he always leaned, (even where he had himself no doubt) to make cases for the opinion of the court; but he took particular care that this should not create delay or expense to the parties, and therefore he always dictated the case in court, and saw it signed by counsel before another case was called, and always made it a condition in the rule that it should be set down to be argued within the first four days of the term. 2 *Burr.* 887. In modern practice, however,

only a memorandum of the facts is made at the trial; and the case itself is not prepared until some days after.

**CASE TO MOVE FOR NEW TRIAL.** A case prepared by the party against whom a verdict has been given, upon which to move the court to set aside the verdict and grant a new trial. *Grah. Pr.* 330. 1 *Burr. Pr.* 469. See *New trial*.

**CASSARE.** L. Lat. [from Lat. *cassus*, void.] In old pleading and practice. To quash, or make void, (*irritum reddere*); to annul. *Ducange. Cassata*; quashed, as pleas, (*exceptiones*.) *Bract. fol.* 394.

To abate. *Towns. Pl.* 26, 59.

**CASSATIO.** L. Lat. [from *cassare*, q. v.] In old practice. A quashing, or making void; an abatement. *Towns. Pl.* 26, 59.

**CASSATION, COURT OF.** [Fr. *cour de cassation*.] The highest court in France; so termed from possessing the power to quash (*casser*) the decrees of inferior courts. It is a court of appeal in criminal as well as civil cases. It was established in 1790, under the name of the *Tribunal of cassation*, and received its present name in 1804. *Encyclop. Americ. Brande*.

**CASSETUR BILLA, or QUOD BILLA CASSETUR.** L. Lat. (That the bill be quashed.) In practice. The form of the judgment for the defendant on a plea in abatement, where the action was commenced by bill, (*billa*.) 3 *Bl. Com.* 303. *Steph. Pl.* 128, 131. (Am. ed. 1824).

The form of an entry made by a plaintiff on the record, after a plea in abatement, where he found that the plea could not be confessed and avoided, nor traversed, nor demurred to; amounting in fact to a discontinuance of the action. 2 *Arch. Pr.* 3, 236. 1 *Tidd's Pr.* 683.

**CASSETUR BREVE, or QUOD BREVE CASSETUR.** L. Lat. (That the writ be quashed.) In practice. The form of the judgment for the defendant on a plea in abatement, where the action was commenced by original writ, (*breve*.) 3 *Bl. Com.* 303. *Steph. Pl.* 107, 109, (128, 131, Am. ed. 1824.)

To **CAST.** [L. Fr. *jecter, getter*.] In old English practice. To allege, offer or present. To cast an *essoign* was to allege an excuse for the failure of a party to appear in court, on the return of the original writ. 3 *Steph. Com.* 659. 3 *Bl. Com.*

278. *Roscoe Real Act.* 156. To cast a protection was to present or allege it as an excuse. *Co. Litt.* 128 a, 130, 131. 3 *Reeves' Hist. Eng. Law*, 406.

This word is now used as a popular rather than a technical term, in the sense of—to overcome, overthrow or defeat in a civil action at law. *Webster*.

**CAST.** [Lat. *jactus*.] Overthrown or defeated in an action. See *supra*.

**CASTELCARDUM.** L. Lat. In feudal law. The defence or guard of a castle, (*castelli guardia*.) *Spelman*. See *Castle-guard*.

**CASTELLAIN.** [Fr. *chastellain, castelain*; L. Lat. *castellanus, castellaris*, qq. v.] In old English law. The keeper or captain of a castle or fortified house, (*præfectus castri*), acting as, or for its owner, (*domini vices ibidem agens*.) *Spelman*, voc. *Castellum*. The constable of a castle. *Id. Bract. fol.* 363, 69 b. 2 *Inst.* 31. *Termes de la ley. Blount*.

**CASTELLANUS, Castellanius, Castellarius.** L. Lat. [from *castellum*, q. v.] In old English law. A castellain; the keeper, captain or constable of a castle. *Spelman*, voc. *Castellum*. *Bract. fol.* 363. See *Castellain*.

An officer of the forest. *Manwood*, part 1, p. 113. *Blount*.

**CASTELLANIA, Castellatura.** L. Lat. [from *castellanus*, q. v.] In old English law. The office of a castellain; the territory or jurisdiction of a castle. *Spelman*, voc. *Castellum*.

**CASTELLARIUM, CASTELLATUS.** L. Lat. [from *castellum*, q. v.] In old English law. The precinct or jurisdiction of a castle. *Blount*.

**CASTELLORUM OPERATIO.** L. Lat. In Saxon and old English law. Castle work. Service and labor done by inferior tenants for the building and upholding castles, and public places of defence. One of the three necessary charges, (*trinoda necessitas*) to which all lands among the Saxons were expressly subject. *Cowell. Kennett's Par. Ant.* 114. See *Trinoda necessitas*.

**CASTELLUM.** L. Lat. In old law. A castle; a fortified building, place or town. *Dicitur tam pro villa, quam pro oppido et structura munita. Spelman*.

**CASTER, CESTER, CHESTER.** Terminations of the names of various places in England; derived from the Lat. *castrum*, a fort or camp, which was appended by the Romans to the names of those places where they fortified themselves. *Tomlins. Whishaw.*

**CASTIGATORY.** [from Lat. *castigare*, to correct.] In old English law. An engine of correction for the punishment of scolds or unquiet women; otherwise called the *cucking stool*, *trebucket*, and *tumbrel*. 4 *Bl. Com.* 168, 169. See *Cucking stool*.

**CASTLEGUARD.** *Castelgard, Castileward.* [L. Lat. *castelgardum, castelli guardia, wardum castri.*] In feudal and old English law. The defence or guard of a castle, otherwise called *watch and ward*. A species of feudal service or tenure; a kind of tenure by knight's service. *Spelman, voc. Castelgardum. Termes de la ley. Litt. sect. 111. Co. Litt. 82 b.* The service was sometimes changed into an annual rent, and then the tenure became a tenure in socage. 4 *Co.* 88; *Luttrell's case.*

An imposition anciently laid upon such persons as lived within a certain distance of any castle, towards the maintenance of such as watched and warded the castle. *Magna Charta, c. 20. Stat. 32 Hen. VIII. c. 48. Cowell.*

The circuit itself, inhabited by such as were subject to this service. *Cowell. Blount. Termes de la ley.*

**CASTLEGUARD RENTS.** In old English law. Rents paid by those that dwelt within the precincts of a castle, towards the maintenance of such as watched and warded it. *Stat. 22 & 23 Car. II. c. 24. See Castleguard.*

**CASTRUM.** Lat. In old English law. A castle. *Bract. fol. 69 b.*

A castle, including a manor. 4 *Co.* 88; *Luttrell's case. 2 Inst. 31.*

**CASU CONSIMILI.** See *Consimili casu.*

**CASU PROVISIO.** L. Lat. (In the case provided.) In old English practice. A writ of entry given by the statute of Gloucester, 6 Edw. I. c. 7, where a tenant in dower aliened in fee, or for life. It lay for him in the reversion against the alienee, during the life of the tenant in dower. *F. N. B. 205 N. Termes de la ley. Rot. voc. Real Act. 94.* It received its name

from a clause which it contained, referring to the statute in that case provided. *Id. 95.*

**CASUAL EJECTOR.** In practice. The nominal defendant in an action of ejectment; so called because, by a fiction of law peculiar to that action, he is supposed to come *casually*, or by accident upon the premises, and to turn out or eject the lawful possessor. \* 3 *Bl. Com.* 203. 3 *Steph. Com.* 670, *et seq. Adams on Eject. 15, 16.* This, with other fictions of the action of ejectment, has been abolished by the laws of some of the United States. 2 *N. Y. Rev. St. [304] 231, § 6. Mich. Rev. St. 471, sec. 6, (ed. 1838.)*

**CASUALTY.** [from Lat. *casus*, q. v.] Inevitable accident; an event not to be foreseen or guarded against. A loss from such an event or cause; as by fire, shipwreck, lightning, &c. *Story on Bailm. § 240.*

**CASUS.** Lat. [from *cadere*, to fall, to happen; Fr. *cas*.] A case. *Casus iste evenit apud Clarendone*; that case happened at Clarendon. *Bract. fol. 45. Est lamen casus, quo, &c.*; there is, however, a case in which, &c. *Inst. 2. 14. pr. Facta et casus qui quotidie emergunt*; the facts and cases which daily arise. *Bract. fol. 1 b. In omni casu. Id. fol. 23. In hoc casu. Id. ibid. Id. fol. 276. Inst. 2. 14. 6.*

A case at law; a cause or action. *Cadit mulier a casu*; the woman loses her case. *Bract. fol. 301 b.*

An event; a circumstance or combination of circumstances. See *Casus fœderis*.

A chance; an accident or misfortune. *Inst. 4. 3. 3. See Casus fortuitus.*

**CASUS FŒDERIS.** Lat. The case of the treaty or compact; the case or event contemplated by a treaty; a case within it, or to which it applies. 1 *Kent's Com.* 49. Applied to an exigency contemplated by the constitution of the United States, (the *fœdus* of the union.) *Id. 264.* Applied also to an ordinary contract, as to a respondentia bond. *Story, J., 4 Mason's R. 253.*

**CASUS FORTUITUS.** L. Lat. [Fr. *cas fortuit.*] A fortuitous or accidental event, an inevitable accident. An event occurring without the intervention of human agency, and producing a loss, in spite of all human effort or sagacity. 3 *Kent's Com.* 216, 300. *Quod fato [damno fatali] contingit, et cuius diligentissimo possit contingere.* That which happens from a cause above human control, and which may happen to any one, even the most careful.

*Id. ibid.* *Accidens quod per custodiam, curam, et diligentiam mentis humanæ evitari non potest.* An accident which cannot be avoided by the utmost caution and effort of the human mind. *Straccha Glossa*. 22, cited 3 *Kent's Com.* 300, note.

*Causa fortuitus non est sperandus; et nemo tenetur divinare.* A fortuitous event is not to be expected, and no man is bound to foretell [or foresee.] 4 *Co.* 66.

**CASUS MAJOR.** Lat. A casualty. *Dig.* 44. 7. 1. 4. *Story on Bailm.* § 240.

**CASUS OMISSUS.** Lat. A case omitted, overlooked or not provided for. Applied usually to omissions in a statute to provide for a particular case. 2 *Bl. Com.* 260. 4 *Id.* 302.

*Causa omissa et obliuioni datus dispositio iuris communis relinquatur.* A case omitted and forgotten is left to the disposal of the common law. 5 *Co.* 38.

**CATALLA.** L. Lat. Chattels, or *catalis*, as anciently written. A term including all property moveable and immoveable, except fees and freeholds; (*omnia bona mobilia et immobilia, quæ nec feoda sunt, nec libera tenementa.*) *Spelman. Termes de la ley*, voc. *Catalis*. *Reg. Orig.* 139 b. 1 *Steph. Com.* 262. See *Chattels*.

This word is considered by *Spelman* as derived, by contraction, from *capitalia*, (which see.) The singular *catallum* rarely occurs, although *Bracton* uses it in several places. *Catalla*, according to the same writer, had nearly or quite the sense of *averia*, (beasts or cattle), being demandable under that name. *Bract.* fol. 159 b. See *Averia*. It seems to have been from a very early period united with the word *bona*, in the phrase *bona et catalla*, of which the familiar modern phrase *goods and chattels* is a translation. *Bract.* fol. 60 b. *Reg. Orig.* 140, 141.

**CATALLA OTIOSA.** L. Lat. Dead goods or chattels, as distinguished from animals. Idle cattle, that is, such as were not used for working, as distinguished from beasts of the plough; called also *animalia otiosa*. *Bract.* fol. 217, 217 b. 3 *Bl. Com.* 9.

**CATALLIS CAPTIS NOMINE DISTRICTIONIS.** See *De catallis*, &c.

**CATALLIS REDDENDIS.** See *De catallis reddendis*.

**CATALLUM.** L. Lat. A chattel.

*Bract.* fol. 60 b. 131, 272. *Laicum catallum*; a lay chattel. *Id.* fol. 412. A word of rare occurrence. See *Catalla*.

This word is not noticed by *Spelman* in his derivation of the plural *catalla* from *capitalia*. The singular of the latter was *capitale*, the change of which into *catallum* does not appear so obvious. See *Capitale*.

**CATANEUS.** L. Lat. In feudal law. A tenant *in capite*, or in chief. *Spelman*. A captain. *Id.*

Considered by *Spelman* as an abbreviation or contraction of *capitaneus*, just as *catalla*, or *catalia* was of *capitalia*. See *Capitaneus*.

**CATCHPOLE.** [L. Lat. *cachepolus*, *cacepolus*.] An officer who makes arrests.

Though now employed as a term of contempt for a sheriff's officer, this word seems to have been formerly used without reproach, as an ordinary official epithet. *Stat.* 25 *Edw.* III. st. 4. c. 2. *Cowell. Blount*.

**CATEUX.** See *Chateux*.

**CATHOLIC EMANCIPATION ACT.** The statute of 10 Geo. IV. c. 7, by which Roman Catholics were restored, in general, to the full enjoyment of all civil rights, except that of holding ecclesiastical offices, and certain high appointments in the state. 3 *Steph. Com.* 109.

**CAUDA TERRÆ.** L. Lat. A land's end; or the bottom or extreme part of a ridge or furrow in arable land. *Cowell*. The bottom or lower end of a field; perhaps, a slip of unploughed land at the lower end of a field, as *caput terræ*, a headland, was at the upper end.\* See *Abutals*, *Butts*, *Headlands*.

**CAULCEIS.** L. Fr. A word used in old statutes, (*Hen.* VI. c. 5,) to signify causeways, or causeys. From the Latin *calcetum*, (q. v.) *Cowell. Blount*.

**CAUPO.** Lat. In the civil law. An innkeeper. See *Caupones*.

**CAUPONA.** Lat. [from *caupo*, q. v.] An inn or tavern. *Inst.* 4, 5, 3. *Dig.* 47. 5.

**CAUPONES.** Lat. (pl. of *caupo*.) Innkeepers. *Dig.* 4. 9. *Id.* 47. 5. *Story on Agency*, § 458.

**CAURSINES.** [L. Lat. *caorcini*, *caursini*, *corsini*.] Italian merchants who came into England in the reign of Henry III., where they established themselves as money

lenders, but were soon expelled for their usury and extortion. *Cowell. Blount. Spelman, voc. Coursini. Matth. Paris, cited ibid.* They seem to have been Lombards, deriving their name from a town in Lombardy.

**CAUSA.** Lat. A cause, occasion or reason. *Causa proxima*; the next or immediate cause, sometimes called *causa causata*; a cause produced by a previous cause. *Causa remota*; the remote or original cause; sometimes called *causa causans*, a cause producing another cause.

In actions on the case, a distinction was formerly made between *causa causans*, the remote cause, and *causa causata*, the consequential damage, or immediate cause of the action. 3 *Reeves' Hist. Eng. Law*, 244. Where a man is interrupted in exercising an office, that is *causa causans*, by which he loses his fees, &c., and that is *causa causata*, the immediate cause or point of the action. 9 *Co.* 50, 51; *The Earl of Shrewsbury's case*.

**Causa proxima, non remota spectatur.** The immediate, not the remote cause, is looked at, or considered. 3 *Kent's Com.* 302. *Story on Bailm.* § 515, and notes. Or, in the language of Lord Bacon, **In jure non remota causa, sed proxima spectatur.** In law, not the remote but the immediate cause is considered. *Bac. Max. Reg.* 1. "It were infinite for the law to judge the causes of causes, and their impulsions one of another; therefore it contenteth itself with the immediate cause, and judgeth of acts by that, without looking to any further degree." *Id. ibid.* Lord Bacon has illustrated this maxim by examples of covenants, leases, feoffments and other conveyances. In modern practice, however, it is chiefly applied to the law of marine insurance, in which it is an established rule that the loss must be a direct or immediate, and not a remote consequence of the peril insured against. *Park on Ins.* (8th ed.) 131. *Broom's Max.* 104. Thus, if a ship be driven ashore by the wind, and in that situation be captured by an enemy, the loss is to be imputed to the capture, and not to the stranding. 3 *Kent's Com.* 302, and note. In this instance, the stranding is the *causa remota*, or *causans*; the capture the *causa proxima*, or *causata*. But see 2 *Bing.* 205. 1 *Story's R.* 157.

The same maxim is applied in the law of agency; an agent not being responsible for a loss occasioned by an act or omission on his part, where the loss is merely a remote consequence of such act or omission.\* *Story on Agency*, § 217 c.

**Causa et origo est materia negotii.** The cause and origin is the substance of the thing; the cause and origin of a thing are a material part of it. The law regards the original act. 1 *Co.* 99, *Shelley's case*. This is substantially the same with the maxim of the civil law:—**Cuiusque rei potissima pars principium est.** The chiefest part of every thing is the beginning. *Dig.* 1. 2. 1.

**CAUSA.** Lat. In old English law. A title; a source, mode or ground of acquisition. 1 *Mackeld. Civ. Law*, 273, § 263. *Titulus est iusta causa possidendi id quod nostrum est.* Title is the lawful ground of possessing that which is ours. 8 *Co.* 153, [305.] *Inter alias causas acquisitionis, magna, celebris, et famosa est causa donationis*; among other sources of acquisition, a great, distinguished and well known source or title is that of gift. *Bract.* fol. 11. *Est etiam alia causa acquirendi rerum dominia, quæ dicitur causa successionis*; there is also another source or mode of acquiring the ownership of things, which is called the source of succession, [title by succession.] *Id.* fol. 62 b. See *Id.* fol. 31 b, 40.

**CAUSA.** L. Lat. In old English law. A condition. *Item alia [donatio] fit ob causam, &c.* *Et hoc genus donationis improprie dicitur donatio, cum fiat sub conditione, &c.*; another kind of gift is made for cause, &c. And this kind of gift is improperly called a gift, since it is made under a condition, &c. *Bract.* fol. 11.

A cause, reason, or consideration; the consideration of a contract. *Dig.* 2. 14. 7. 1, & 2. *Fit etiam donatio quandoque ex causa præcedente, et quandoque ex causa subsequente; præcedente, ut si dicam, do tibi hanc rem quia mihi bene servisti, &c.* A gift is also sometimes made for a preceding consideration, and sometimes for a subsequent consideration; a preceding one, as if I should say, I give you this thing because you have served me well. *Bract.* fol. 19 b. *Fit donatio alicui ob causam præteritam, quia diu servivit, vel præsentem, quia bene servit, vel futuram, quia bene serviet, &c.* A gift is made to one for a past consideration, because he hath served long, or a present consideration, because he doth serve well, or a future, because he will serve well. *Id.* fol. 38 b.

**Quia**, in the civil law, was the proper word to denote a cause or consideration, as *ut* denoted a qualification, and *si*, a condition. *Id.* fol. 18 b. Hence the verse,

*Scito quod ut modus est, si, conditio, quia, causa.*  
*Id. ibid.*

**CAUSA.** Lat. A cause; a suit or action pending. *Causa testamentaria*, a testamentary cause. *Causa matrimonialis*; a matrimonial cause. *Bract.* fol. 61. *Causa jactitationis matrimonii*; a suit of jactitation of marriage. All these causes are in England exclusively cognizable in the spiritual courts. *Id. ibid.* 3 *Steph. Com.* 712—715.

**CAUSA.** L. Lat. In old European law. Any moveable thing or article of property, (*pro re quavis et bonorum parte.*) *Capitul.* lib. 5, tit. 208. *L. Salic.* tit. 46. *Spelman.*

**CAUSA REL.** Lat. In the civil law. The accessions, appurtenances or fruits of a thing; comprehending all that the claimant of a principal thing can demand from a defendant in addition thereto, and especially what he would have had, if the thing had not been withheld from him. *Inst.* 4. 17. 3. 1 *Mackeld. Civ. Law*, 155, § 153. *Id.* 310, § 289.

**CAUSA.** Lat. By reason of, on account of. See *Causa matrimonii prælocuti.* With reference to, in contemplation of. *Causa mortis*; in anticipation of death. See *Donatio causa mortis.*

**CAUSA MATRIMONII PRÆLOCUTI.** L. Lat. (By reason of a marriage before treated of.) In old English practice. A writ of entry that formerly lay where a woman had given lands to a man in fee simple, with the intent that he should marry her, and he refused to do so within a reasonable time, after having been required by the woman. *Reg. Orig.* 233. *F. N. B.* 205. 3 *Reeves' Hist. Eng. Law*, 38. 3 *Bl. Com.* 183, note. *Roscoe Real Act.* 98.

**CAUSAM NOBIS SIGNIFICES.** L. Lat. (You signify to us the reason). In old English practice. A writ which formerly lay where a mayor of a town or city, after having been commanded by the king's writ to give seisin to the king's grantee, had delayed to do so; commanding him to *show cause* why he so delayed the performance of his duty. *Cowell.* *Blount.*

**CAUSARE.** L. Lat. [from *causa*, q. v.] In old English practice. To cause or produce. *Causans*, causing. *Causata*, caused. To complain of, to show cause against, or object to. *Causari poterunt et calumpniari multis modis*; they may be objected to, and challenged in many ways. *Bract.* fol. 75 b. *Id.* fol. 238. 334.

In old European law. To manage a cause, to litigate, (*causam agere, litigare.*) *Spelman*, voc. *Causa.* *Si quis causam alterius agere aut causare præsumpserit*; if any one shall presume to prosecute or manage the cause of another. *LL. Longob.* lib. 2. tit. 52. l. 1, cited *ibid.* So *actionare*, (q. v.) to prosecute an action.

**CAUSATOR.** L. Lat. [from *causare*, q. v.] One who manages or litigates another's cause. *Spelman*, voc. *Causa.*

**CAUSIDICUS.** Lat. [from *causa*, and *dicere*, to speak.] A pleader; one who argued a cause *ore tenus.* *Nullus clericus nisi causidicus*; no clerk who was not a pleader. *Will. Malms. De Gest. Reg.* l. 4. 1 *Bl. Com.* 17. 1 *Spence's Chancery*, 14, note (d).

**CAUTELE.** L. Fr. Precaution. *Et bone cautele serra*; and it will be a good precaution. *Britt.* c. 39.

**CAUTIO.** Lat. [from *cavere*, to take care, provide for, secure.] In the civil law. Security for the performance of an obligation, or other act; security in an action; bail, or, as literally rendered in the Scotch law, *caution*; otherwise termed *satisfactio.* *Inst.* 4. 11. *Dig.* 2. 8. *Fleta*, lib. 6, c. 45. See *Caution.* *Idonea cautio*; sufficient security. *Reg. Orig.* 67. *Cautio juratoria*; security given by the oath of the party. *Inst.* 4. 11. 2. 1 *Mackeld. Civ. Law*, 176, § 184. *T. Raym.* 226, arg. *Cautio fidejussoria*; security given by sureties, or pledges. *Id. ibid.* *Bract.* fol. 337 b. *Cautio pignoratitia*; security given by pledge, or deposit, as plate, money, or other goods. *T. Raym. ub. sup.* *Reg. Orig.* 66, 67, *et in marg.* See *De cautione admittenda.*

**CAUTION.** In Scotch law. Security, bail. *P. Cyclopædia*, voc. *Bail.*

**CAUTIONARY.** In Scotch law. The obligation by which a party becomes surety for another, answering to the English *guarantee.* It is defined by Stair, "the promise or contract of a man, not for himself, but another." *Brande.* See *Ersk. Inst.* b. 3, tit. 7, § 22.

**CAUTIONER.** In Scotch law. A surety for a debt. 1 *Kames' Equity*, pref. *Id.* 410, 417. *Ersk. Inst.* b. 3, tit. 7, § 23. A guarantor. *Brande.*

**CAUTIONRY.** In Scotch law. Suretyship. 1 *Forbes' Inst.* part 2, b. 3, ch. 2, tit. 3.

**CAVEAT.** Lat. [from *cavere*, to take care, or beware.] Let him beware. A formal notice, or caution, given by a party interested, to a court, judge, or public officer, against the performance of certain judicial or ministerial acts. *P. Cyclopædia.* A process used in the spiritual courts in England, and in courts of similar jurisdiction in the United States, to prevent the proving of a will, or the granting of administration; and in the English and United States courts, to prevent the granting of letters patent. 3 *Bl. Com.* 98, 246. *Loveless on Wills*, 35. 2 *Steph. Com.* 89. *Dane's Abr.* c. 223.

In American law. A kind of equitable process, resembling an injunction, issued to prevent the granting of a patent for lands. 3 *Call's R.* 495. 2 *Hilliard's Real Prop.* 251, note (1). The expressions "to caveat," "a caveator" are used in some of the states. 4 *Call*, 196. 3 *Id.* 28.

The object and effect of a caveat are to stay the proceedings, in order to allow the party interested an opportunity of contesting the validity of the will, or the right to the administration, or letters patent. 2 *Chitt. Gen. Pract.* 502, 503. 3 *Bl. Com.* 98.

**Caveat emptor.** Let the buyer take care; the buyer must take care, or be on his guard. *Hob.* 99. *Co. Litt.* 102 a. 2 *Inst.* 714. The purchaser must examine for himself the article offered to him for sale, and exercise his own judgment respecting it. If he purchase without examination, or after a hasty examination, or in mere reliance upon the seller, and the article turns out to be defective, it is his own fault, and he has no remedy against the seller, unless the latter expressly warranted the article, or made a fraudulent representation concerning it, or, knowing it to be defective, used some art to disguise it. This is a leading maxim of the law relating to the contract of sale; and its application is not affected by the circumstance that the price is such as is usually given for a sound commodity. 2 *Steph. Com.* 126, and cases cited *ibid.* *Cro. Jac.* 2. 1 *Smith's Leading Cases*, 78. *Broom's Maxims*, 354. 2 *Wooddes. Lect.* 251. 2 *Kent's Com.* 478—488, and notes. 1 *Story's Eq. Jur.* § 212. It seems to have been originally applicable not to the quality, but the title of the goods sold. *Hob.* 99. *Stat.* 13 *Edw.* 1. c. 40. *Year Book*, 14 *Hen.* VIII. 8. 2 *Wooddes. Lect.* 251, note.

In modern law, however, the rule is, that if the seller has possession of the article, and sells it as his own, and not as agent for another, and for a fair price, he is understood to warrant the title. 2 *Kent's Com.* 478.

Lord Hobart, in the case of *Moore v. Hussey*, refers to the statute of Westminster 2, c. 14. [40], as giving this maxim at length in the following words, *Caveat emptor qui ignorare non debuit quod jus alienum emit*, (let the purchaser beware, who should not be ignorant that he is buying the right of another.) *Hob.* 99. The important word *caveat*, however, is not used in the passage of the statute referred to, which is in the following words: *Expect emptor (qui ignorare non debuit quod jus alienum emit) usque ad aetatem warranti sui, &c.*; the purchaser shall wait, (who ought not to have been ignorant that he bought the right of another,) until the age of his warrantor, &c. The case of a sale of goods does not appear to be contemplated by the statute. 2 *Inst.* 455.

**CAVERE.** Lat. In the civil and common law. To take care, to exercise caution. See *Caveat emptor*.

To take care or provide for; to provide by law. *Cavetur*; provision is made, a remedy is given. *Inst.* 4. 3. 13. *Cautum est*; it is provided or enacted. *Id.* 3. 8. 2. *Id.* 4. 3. pr.

To provide against; to forbid by law. *Inst.* 1. 25. 13.

To give security. *Nisi caveant tutores et curatores, &c.* *Inst.* 1. 24. 3.

**CAYA.** L. Lat. [Sax. *cæg.*] A quay, kay, key, or wharf. *Cowell*.

**CAYAGIUM.** L. Lat. [from *caya*, q. v.] In old English law. Cayage or kayage; a toll or duty anciently paid for landing goods at a quay or wharf. *Cowell*. See *Kayage*.

**C. B.** An abbreviation of *Communis Bancus*. Initial letters employed in the books to designate the court of *Common Bench*, or *Common Pleas*, in England. See *Bancus*, *Communis Bancus*. The letters *C. P.* are now generally used.

**CE, Ceo, Cecy.** L. Fr. This, that. *Kelham.* *Ceals*; those. *Id.*

**CEAPGILD, Ceappel.** Sax. [from *ceap*, a beast, or other chattel, (Lat. *merx*, *pecus*, *catallum*), and *gild*, or *geld*, a payment, or forfeiture.] The payment or forfeiture of

a beast; a species of forfeiture anciently imposed in England. *Spelman. Id. voc. Hundredus.* In several of the Lexicons, this word is erroneously written *caepgildum*.

CEAUS, *Ceaux.* L. Fr. Those. *Assiz. de Jerus. c. ix. Kelham.*

CEDENT. [from Lat. *cedens*, one who cedes or transfers.] In Scotch law. An assignor. 1 *Kames' Equity*, pref. *Id.* 403. 2 *Id.* 351.

CEDERE. Lat. To yield or give up; to assign or transfer; to cede. *Si quis ex sociis—bonis suis cesserit*; if a partner make an assignment of his goods. *Inst.* 3. 26. 8. *Id.* 4. 6. 40.

To yield or give way to another, as superior; to go or pass with a thing, as an inferior or subordinate thing; to follow as a part of a thing; to belong to. Hence the compounds *accedere*, and *accessio*, (q. v.)

*Cedere* is of very frequent occurrence in the civil law. *Cedere solo, pictura, vestimento*, &c., to go with, or belong to the soil, painting, garment, &c. *Inst.* 2. 1. 26, 32—34. *Omne quod solo inaedificatur solo cedit.* Every thing which is built upon land goes with or belongs to the land. *Id.* 2. 1. 29. *Frumenta quæ sata sunt solo cedere intelliguntur*; grains which are planted are understood to belong to the soil. *Id.* 2. 1. 32.

So, in Bracton, who borrows from the civil law:—*Tabula cedit pictura*; the tablet goes with the painting. *Bract.* fol. 10. *Purpura cedit vestimento, jure accessionis*; the purple goes with the garment by right of accession. *Id. ibid.* *Minor cedit majori vel præciosiori*; the lesser goes with the greater, or more valuable. *Id.* fol. 9 b. And see the maxims *Aqua cedit solo, Belle porta cedunt reipublicæ*.

CEL. L. Fr. This. *A cel jour*; at this day. *Litt.* sect. 140, 217.

CELDRA, *Celda.* L. Lat. In old English law. A chaldron. *Chaldra. Pryn.* 183. *Celda carbonum.* Towns. Pl. 172.

In old Scotch law. A measure of grain; a chaldre. 1 *Kames' Equity*, 215. *Cowell. Celdra frumenti. Id.*

CELERARIUS. L. Lat. In old English law. A steward of a monastery. *Bract.* fol. 318. *Blount.*

CELUI, *Celuy.* L. Fr. He, him. *Celuy que fist le leas est appel lessor, et celuy a*

*que le leas est fait est appel lessee.* *Litt.* sect. 57. *Appertient a celui a que le fait est fait*; belongs to him to whom the deed is made. *Id.* sect. 375.

CENEGILD. [Sax. *cynegild*; from *cyn*, relationship, kin, and *geld*, a payment.] In Saxon law. A mulct, or pecuniary composition paid by one who had killed another, to the relatives of the deceased, by way of expiation. *LL. Ethelstan. c. 7. Spelman.*

CENELLÆ. L. Lat. Acorns. *Cowell.*

CENNINGA. L. Lat. [from Sax. *cenning*, knowledge.] In Saxon law. Notice given by a buyer to a seller, that the thing sold was claimed by another, that he might appear and justify the sale. *Add. ad Leg. Inæ MS. apud Spelman.*

CENSARIA. L. Lat. In old English law. A farm, or house and land let at a standing rent, (*ad censum.*) *Cowell. Blount.*

CENSARII. L. Lat. Farmers. *Blount.* Or, according to *Cowell*, those who were liable to pay a tax, (*census.*) *Cowell. Domesday*, cited in *Blount.*

CENSUALES. L. Lat. [from *census*, a rent or tribute.] In old European law. A species of the *oblati*, or voluntary vassals of churches or monasteries. Persons who paid an annual tax or quit rent out of their estate, to a church or monastery, in order to procure its protection, and who sometimes engaged to perform certain services. 1 *Robertson's Charles V, Appendix*, note xx.

CENSUMORTHIDUS. L. Lat. A dead rent; the same as mortmain. *Cowell. Holthouse.*

CENSUS. L. Lat. In old European law. A tax, or tribute, (*tributum*;) a toll. *Esprit des Loix*, liv. 30, c. 14.

A particular tax imposed on bondmen by their masters. *Id.* c. 15.

A yearly payment or rent. See *Censaria, Censuales.*

A yearly income or revenue. *Census regalis*; the royal revenue. 1 *Bl. Com.* 306. 2 *Steph. Com.* 564.

CENTENA. L. Lat. [from *centum*, a hundred.] A hundred. A district or division containing originally a hundred free-men, established among the Goths, Germans, Franks and Lombards, for military and civil purposes, and answering to the



Saxon hundred. *Spelman*. 1 *Bl. Com.* 115. *Espit des Lois*, liv. 30, c. 17. The Saxon division is also sometimes called *centena*, but is more commonly rendered in law Latin, *hundredum*, or *hundredus*. *Spelman*, *ubi sup.* See *Hundred*, *Hundredum*, *Centenarius*, *Centeni*.

CENTENA. L. Lat. In old records and pleadings. A hundred weight. *Centena piscium*; a hundred weight of fish. *Pryn.* 308. *Towns. Pl.* 170. See *Cro. Eliz.* 754.

CENTENARIUS. L. Lat. [Fr. *centenier*, from *centena*, q. v.] In old European law. One of a *centena*, or hundred; the head or chief of a *centena*, (*præfectus centena*;) among the Goths, Germans, Franks and Lombards; an inferior judge. See *infra*.

According to *Spelman*, this term was originally used to denote any member of a *centena*, but was finally restricted to the head or chief; (*centenarius primo dictus est unusquisque ex eadem centena, demum præfectus tantum*;) who, in addition to his military rank as leader of the freemen of the *centena*, under the *comes*, or count, had also judicial powers, and held courts answering to the hundred courts among the Saxons. *Spelman*, *voc. Centena*. *Espit des Lois*, liv. 28, c. 28, liv. 30, c. 17, 18, 22. See *Centenarii*. In the laws of the Anglo-Saxons, the term *centenarius* was applied to that judicial magistrate (otherwise called *centurio*;) who had jurisdiction over a hundred friborgs, or ten tithings; afterwards called bailiff or constable of the hundred, (*dominus hundredi*;) *LL. Edw. Confess.* c. 32, *apud Spelman*. 1 *Bl. Com.* 115.

CENTENARII. L. Lat. [plur. of *centenarius*, q. v.] In old English law. The freeholders of a hundred; (*liberi tenentes qui in centena degunt*;) hundredors. *Spelman*, *voc. Centena*.

CENTENI. Lat. [from *centum*, a hundred.] A hundred men; hundred men. The number of men enrolled for military service from each district, among the ancient Germans, and which afterwards became their distinctive name. *Centeni ex singulis pagis sunt; idque ipsum inter suos vocantur; et quod primo numerus fuit jam nomen et honor est*; there are a hundred [fighting] men from each district; and they are called the same thing [i. e. hundred] among their companions; and what was at first a mere number is now a name and a distinction. *Tacitus de Mor. Germ.* c. 6.

*Spelman*, *voc. Centena*. This is supposed to be the origin of the military and civil divisions called *centenæ*, or hundreds. *Ibid.* 1 *Bl. Com.* 115, 116.

CENTESIMA. Lat. [from *centum*, a hundred.] In the Roman law. One per cent. monthly, or twelve per cent. *per annum*. In calculating the rate of interest, the Romans divided the principal sum into an hundred parts, one of which they allowed to be taken monthly; and this, which was the highest rate of interest permitted, they called *usura centesima*, amounting yearly to twelve per cent. 2 *Bl. Com.* 462, note (m).

CENTRAL CRIMINAL COURT. An important court established in London in 1834, by statute 4 & 5 Will. IV. c. 36, and to which the entire criminal jurisdiction of the court of admiralty was transferred. 4 *Steph. Com.* 331. *Wharton's Lex. Warren's Law Studies*, 365.

CENTUMVIRI. Lat. A hundred men. The name of a Roman court consisting of a hundred judges, to whom belonged the decision of the most important questions of law, such as those relating to inheritances, wills, guardianships, sales, the enjoyment of party walls, windows, the drip of water, and numerous other important subjects, which were called *causæ centumvirales*. *Cic. de Orat.* i. 38, 39. *Plin. Epist.* ii. 14. 3 *Bl. Com.* 315. Properly there were 105 judges, three being chosen from each of the thirty-five tribes; but they were always named by a round number, *centumviri Festus*.

CEO. L. Fr. [Lat. *hoc*.] This, that, (plur. *ceux*.) *Et ceo voil jeo averer, la ou il duist dire et ceo profre jeo a prover*; "and this I will aver," where he should say, "and this I offer to prove." *Britt. c.* 22. *Ceo oyes vous home qui jeo teigne par la mayn*; hear this you man whom I hold by the hand. *Id. ibid.* *Ceo vous monstre*; this shows to you; (Latinized in Bracton, *hoc ostendit vobis*. *Bract.* 296 b, 372 b.) The beginning of a declaration, when in French, and actually pronounced in court; as it occurs in the year books, before the thirty-sixth year of Edward III. "This showeth unto you A. who is here, that B. who is there, unjustly detains from him," &c. 3 *Reeves' Hist. Eng. Law*, 59. *Crabb's Hist.* 217. *Steph. Pl.* 422, (Am. ed. 1824.) *Id. Appendix, Note* (75.)

CEORL, *Carl, Churl*. Sax. [L. Lat.

*ceorlus, cirlus, cirlicus.*] A freeman of inferior rank, chiefly employed in husbandry; a husbandman; (Lat. *rusticus, paganus.*) *Spelman*, voc. *Ceorlus*. *L.L. Inq.* cc. 38, 42, 52, cited *ibid.* A tenant at will of free condition, among the Anglo-Saxons, who held land from the thane, on condition of rents and services. *Cowell*, voc. *Churle*. 1 *Reeves' Hist. Eng. Law*, 5. The *ceorls* are mentioned in the earliest Saxon codes, and in the later charters, under the names of *cassati, manentes, and tributarii*. 1 *Spence's Chancery*, 50, 51, and notes.

*Churl*, one of the forms of this word, (and probably pronounced *curl*, with the *ch* hard,) has, like the corresponding term *villain*, among the Normans, become a term of reproach. *Spelman ubi sup.*

CEP. L. Fr. Stock, a stock. *Del common cep*; of a common stock. *Britt. c.* 119.

CEPI CORPUS. L. Lat. (I have taken the body.) In practice. The technical name of the return made by a sheriff to a *capias*, that he has taken the body of the party. *F. N. B.* 26. 3 *Bl. Com.* 288. 1 *Tidd's Pr.* 308—310. See *Capias*. It is derived from the two emphatic words of the return which was anciently endorsed in law Latin on the writ.

*Cepi corpus* properly is the return where the defendant is out on bail; where he is in actual custody, the return is *cepi corpus in custodia*. 1 *Tidd's Pr.* 308, 309. *Sewell's Law of Sheriff*, 387. *Cepi corpus et paratum habeo*, (I have taken the body and have it ready,) is another form of this return, which anciently implied that the party was in actual custody, but is now the proper return where the defendant has been arrested and discharged on bail. *Id. ibid.* 1 *Tidd's Pr. ub. supra.*

CEPIT. Lat. [from *capere*, to take.] In pleading. (Took, or he took.) The emphatic word formerly used in writs of trespass for taking personal property, and in declarations in replevin and trespass; and literally translated in the modern forms of those pleadings. See *infra*. The Latin word is still used as descriptive of the action in certain cases. Thus, in replevin, when the action is for the taking only, it is said to be "in the *cepit*." 3 *Hill's N. Y. Rep.* 282, 248.

CEPIT ET ABDUXIT. L. Lat. In old English practice. ([He] took and led away.) The emphatic words in writs of trespass where the writ was for live things,

as animals. *Reg. Orig.* 92, 168. *F. N. B.* 86 A, note. *Id.* 88 B.

CEPIT ET ASPORTAVIT. L. Lat. In old English practice. ([He] took and carried away.) The emphatic words in writs of trespass, where the writ was for dead things. *F. N. B.* 86 A, note. *Id.* 88 B. Literally translated in modern declarations in trespass, and in indictments for theft. 4 *Bl. Com.* 231. *Cepit et abcarriavit* was a different form of the same expression. *Towns. Pl.* 166, 167.

CEPIT IN ALIO LOCO. L. Lat. In pleading. [He] took in another place. The name given to a plea in the action of replevin, which should be pleaded where the defendant desires a return of the cattle taken. 1 *Chitt. Pl.* 499. 3 *Id.* 1045.

CERA. Lat. Wax. *Brevia sua porrigunt in cera*; deliver their writs in wax, [under seal.] *Stat. Westm.* 2, c. 10.

CEREVISIA, *Cervisia*. L. Lat. In old English law. Ale or beer. See *Cervisia*.

CERT MONEY. [*quasi* certain money.] In old English law. Head money or common fine. Money paid yearly by the residents of several manors to the lords thereof, for the certain keeping of the leet, (*pro certo letæ*;) and sometimes to the hundred. *Blount.* 6 *Co.* 78, *Bullen's case*.

CERTAIN. [Lat. *certus, certum*.] Clear or distinct, as opposed to obscure. *Steph. Pl.* 380, note (a).

Particular, as opposed to general. *Id. ibid.* 132.

Limited, specified, defined, as opposed to indefinite. See *Certainty*.

"To put in certain," (L. Fr. *mettre en certaine*.) *Litt. sect.* 137. "To put into certainty," (L. Lat. *ad certitudinem ponere*;) to reduce to certainty. *Co. Litt.* 96 a.

CERTAIN SERVICES. In feudal and old English law. Such services as were stinted (limited or defined,) in quantity, and could not be exceeded on any pretence; as to pay a stated annual rent, or to plough such a field for three days. 2 *Bl. Com.* 61.

CERTAINTY. [L. Lat. *certitudo*.] In pleading. Clearness or distinctness, as opposed to obscurity or ambiguity.

Particularity, as opposed to undue generality. *Steph. Pl.* 132, 380, note.

Lord Coke distinguishes three kinds of certainty; first, certainty to a common

intent, [that is, according to reasonable intendment or construction, *Steph. Pl.* 380:] which is sufficient in a bar [plea,] which is to defend the party, and to excuse him: secondly, certainty to a certain intent in general, which is sufficient in counts, [declarations,] replications, and other pleadings of the plaintiff: thirdly, certainty to a certain intent in every particular, which is required in estoppels. *Co. Litt.* 303 a. 1 *Tidd's Pract.* 451.

**CERTIFICARE.** L. Lat. [from *certus*, certain, and *facere*, to make.] To certify; to make certain, to give information.

**CERTIFICATE.** [L. Lat. *certificatorium*, from *certificare*, q. v.] In practice. A writing made in any court, to give notice to another court of any thing done therein. *Cowell. Blount. Termes de la ley.* A writing signed by the judges of a court, or a single judge, or by an officer of the court, certifying to, or giving formal and official notice of certain facts; generally, for the use of another court, judge or officer.\*

**CERTIFICATE FOR COSTS.** In practice. A certificate granted by a judge before whom a cause has been tried, stating some matter of fact which is necessary to be ascertained in order to fix the amount of the costs.\* 1 *Tidd's Pr.* 792, 952. 3 *Steph. Com.* 631, 640. 3 *Wooddes. Lect.* 148.

**CERTIFICATE OF REGISTRY.** In maritime law. A certificate of the registration of a vessel according to the Registry Acts, for the purpose of giving her a national character. 3 *Steph. Com.* 274. 3 *Kent's Com.* 139—150. *Abbott on Ship.* [72], 89. (Perkins' ed.) Sometimes confounded with the register itself, although it is only an abstract of it. *Act of Congress*, 31 Dec. 1792, § 9. It is a custom-house document, and one of the most important of a ship's papers, though it is not required by the law of nations as expressive of a ship's national character. 4 *Taunt.* 367. 3 *Kent's Com.* 149. See *Register*.

**CERTIFICATION OF ASSISE OF NOVEL DISSEISIN.** [L. Lat. *certificatio assise nove disseisine*.] In old English practice. A writ formerly granted for the re-examination or review of a matter passed by assise before any justices, where some point of the assise had been overlooked, or not sufficiently examined. *Reg. Orig.* 200. *Cowell. Blount.*

**CERTIORARI.** L. Lat. [*Certior fieri*,

to be made more certain; to be certified, or more distinctly informed.] In practice. A writ, used generally for the purpose of removing causes, before trial or judgment, from inferior to superior courts. It is issued out of the superior court, (or, in England out of the court of chancery,) and is directed to the judges or officers of the inferior court, reciting the will of the king or people to be certified of the proceeding, (*quia certis de causis CERTIORARI volumus, &c.*) and commanding the record to be sent or returned before them. See the old forms, *Reg. Orig.* 284. *F. N. B.* 242 b, *et seq.* It may be had either in criminal or civil cases. 3 *Steph. Com.* 703. 4 *Bl. Com.* 265, 272, 320. 1 *Tidd's Pr.* 397. *Bac. Abr.* Certiorari, A. *Com. Dig.* Certiorari, A. It lies also as an auxiliary process on writs of error, where the whole of the record is not certified by the court below, to obtain a complete return. 2 *Tidd's Pr.* 1167. *U. S. Dig.* Certiorari, I. And it lies (in place of a writ of error) after judgment, to review the judgments of inferior courts and judges, when they act in a summary way, or in a new course different from the common law. 1 *Tidd's Pr.* 400. 2 *Id.* 1134.

In American practice, a *certiorari* is used as a mode of appeal from the judgments of courts not of record. 2 *Burr. Pr.* 198. *U. S. Dig.* Certiorari, I. It is also the proper process for correcting any error that may have occurred in the proceedings of an inferior court when such proceedings are, in any stage of them, different from the course of the common law, unless some different process is given by statute. *U. S. Dig.* Certiorari, I, 2, 3, *et seq.* and the cases there cited. Its application also is not confined to the decisions of courts, properly so called, nor to proceedings in actions, but comprehends the determinations of special tribunals, commissioners, magistrates and officers exercising judicial powers affecting the property or rights of the citizen, and who act in a summary way, or in a new course different from the common law, and also the proceedings of municipal corporations in certain cases. *Paige, Senator*, 25 *Wendell's R.* 167. 2 *Hill's R.* 9, 14.

**CERTITUDO.** L. Lat. [from *certus*, certain.] Certainty. *Talis certitudo certitudinem confundit*; such nice and capacious pretence of certainty confounds true and legal certainty. 8 *Co.* 112.

**CERTITUDINALITER.** L. Lat. Certainly. *Reg. Orig.* 22.

**CERTUM.** Lat. Certain. See *Certain*. [Id.] *certum est quod certum reddi potest*. That is certain, which can be made certain, or is capable of being reduced to a certainty. 9 Co. 30. Co. Litt. 96 a. Thus, if a man make a lease to another for so many years as J. S. shall name, it is a good lease for years; for though it is at present uncertain, yet when J. S. has named the years, it is then reduced to a certainty. 6 Co. 35 b. 2 Bl. Com. 143. 1 Steph. Com. 267. The same maxim has been applied to a custom, a conveyance, an award, a contract for the sale of goods, a contract for the performance of labor, and an indenture of apprenticeship. *Broom's Max.* 416, and note (f), and cases there cited. 6 Ad. & Ell. N. S. 152, 566. *Story on Bailm.* § 375.

**CERTUS, Certa.** Lat. Certain; defined, particularly described or specified. *Oportet quod certa res deducatur in donationem, quia incerta rei nulla est donatio*; It is necessary that the thing which is the subject of the gift should be certain, because the gift of an uncertain thing is null. *Bract.* fol. 15 b. *Certa debet esse intentio, et certum fundamentum, et certa res quæ deducitur in iudicium*; the count ought to be certain, and its foundation certain, and the thing which is brought into court certain. *Id.* fol. 240.

**CERVISARII.** L. Lat. [from *cervisia*, q. v.] Certain tenants among the Saxons, who were liable to a duty called *drinclean*, which was a contribution towards providing ale (*cervisia*), to entertain the lord or his steward. *Domesday.* *Blount*.

**CERVISIA.** L. Lat. [L. Fr. *cervoise*.] In old English law. Ale or beer, properly the former. *Reg. Orig.* 280. *Bract.* fol. 117 b. *Cervisia lupulata*; beer. *Towns. Pl.* 234. *Una mensura cervisiæ*; one measure of ale. *Magna Charta*, c. 25. See *Britt.* c. 30. *Cervisiæ*; ales. *Bract.* fol. 117 b.

**CERVISIARIUS.** L. Lat. [from *cervisia*, q. v.] An ale-house keeper. *Towns. Pl.* 267.

A beer or ale brewer. *Blount*, voc. *Cervisarii*.

**CESSANTE.** See *Cessare*.

**CESSARE.** L. Lat. To cease, stop, or stay. *Cessante causa, cessat effectus*; the cause ceasing, the effect ceases also. *Bract.* fol. 202. 4 Co. 38. *Broom's Max.* 68.

*Shep. Touch.* 287. *Cessante ratione legis, cessat et ipsa lex*. The reason of the law ceasing, the law itself ceases also. Co. Litt. 70 b. 2 Bl. Com. 390, 391. *Broom's Max.* 68.

To come to an end, or determine, as an estate. *Cessante statu primitivo, cessant derivativa*. When the primitive or original estate determines, the derivative estate determines also. *Shep. Touch.* (by Preston,) 155. 4 *Kent's Com.* 32. Applied to the cessation of the estates of dower and curtesy, on the determination of the principal estate out of which they are derived. *Id.* *ibid.* 8 Co. 67. See *Determine*.

To cease or neglect; to *cess*, in the old books. *Cowell*, voc. *Cessor*. *Cessavit per biennium* (q. v.); he ceased or neglected for two years. See *infra*.

**CESSAVIT PER BIENNIUM.** L. Lat. (He ceased for two years.) In old English practice. A writ in the nature of a writ of right, founded upon the doctrine of tenure, and formerly a very common remedy. *Roscoe Real Actions*, 31, 32. 2 *Reeves' Hist. Eng. Law*, 326. It lay first, upon the statute of Gloucester, (6 *Edw. I.* c. 4,) which gave it to the lord against the tenant in fee, who *ceased for two years* to pay and perform his fee farm rent and services; extended by the statute of Westminster 2, c. 21, to other rents and services; and secondly, upon the statute of Westminster 2, c. 41, where land was given for a chantry (*cantaria*), light, sustenance of poor people, &c., and the alms were withdrawn for the space of two years. *Reg. Orig.* 237 b. *F. N. B.* 208 H. *Roscoe Real Actions*, 32, 33. 2 *Reeves' Hist. Eng. Law*, 145. 3 *Id.* 50. 3 *Bl. Com.* 232. This writ did not lie, unless the land had lain fresh and uncultivated for two years (*biennium*), and there was not a sufficient distress upon the premises, or unless the tenant had so enclosed the land that the lord could not come upon it to distrain. 2 *Inst.* 296. *Roscoe Real Actions*, *ub. supra*.

**CESSE.** In old English law. An assessment, exaction or tax. *Stat. 22 Hen. VIII.* c. 3. *Cowell*.

**CESSER, Cessure.** Neglect; <sup>2</sup> ceasing from, or omission to do a thing. 3 *Bl. Com.* 232.

The determination of an estate. 1 Co. 84. 4 *Kent's Com.* 33, 90, 105, 295.

**CESSET EXECUTIO.** L. Lat. (Let execution stay.) In practice. A stay of

execution; or an order for such stay; the entry of such stay on record. 2 *Tidd's Pr.* 1104. 3 *Wooddes. Lect.* 8.

**CESSIO.** Lat. [from *cedere*, to give up, or yield.] A cession, giving up or surrender; an assignment. 1 *Kames' Equity*, 403. See *Cessio bonorum*.

**CESSIO BONORUM.** Lat. In the Roman law. A cession, or giving up of goods. The surrender of all a debtor's property to his creditors, by which, under the law of cession introduced by the christian emperors, he obtained an exemption of his person from imprisonment, and all bodily punishment, (*omni quoque corporali cruciatu semoto*.) 2 *Bl. Com.* 473. This term is now applied, in the modern jurisprudence of most of the states of Europe, and also in American law, to the surrender of an insolvent's estate and effects to his creditors. *Ersk. Inst.* b. 4, tit. 3, § 26. 3 *Burge's Col. & For. Law*, 890, *et seq.* 1 *Kent's Com.* 422, 247. 2 *Id.* 396, note.

**CESSION.** [from Lat. *cessio*, q. v.] A giving up, relinquishment or abandonment of a right, or of property. See *Abandonment*.

In the civil law. A giving up, surrender or assignment of goods to, or for the benefit of creditors. See *Cessio bonorum*.

In ecclesiastical law. A giving up, or vacating a benefice, by accepting another without a proper dispensation. 1 *Bl. Com.* 392. *Latch*, 234. 4 *Co.* 78, *Dygby's case*.

**CESSOR.** In old English law. One who ceased or neglected so long to perform a duty belonging to him, as to incur the danger of the law, and to become liable to have a writ of *cessavit* brought against him. *Old Nat. Brev.* 136. *Cowell*.

**CESSURE.** L. Fr. A receiver; a bailiff. *Kelham*.

**CESSURE.** See *Cesser*.

**C'EST ASCAVOIR.** L. Fr. That is to say, or to wit. Generally written as one word, *cestascavoir*, *cestascavoire*. *Stat. Westm.* 1, c. 22. *Artic. sup. Chart.* c. 1. *Litt. sect.* 13, 239. Another form was *cest asaver*. *Britt.* c. 126. And, in one word *cestasaver*. *Id.* c. 22.

**CESTR'.** An abbreviation of *Cestria*, Cheshire, in old English pleadings and records. *Towns. Pl.* 147.

**CESTUI, Cestuy.** L. Fr. He. *Cestuy que doit emheriter al pere, doit emheriter al fis.* He who would have been heir to the father, shall be heir to the son. *Year Book, M.* 12 *Edw.* IV. 14. 2 *Bl. Com.* 223, 239, 250.

**CESTUY QUE USE.** L. Fr. [*Cestuy a l'use de qui*; Lat. *ille cujus usui, or ad cujus usum.*] He to whose use another is enfeoffed of lands or tenements. *Cowell.* 2 *Bl. Com.* 328—333. 4 *Kent's Com.* 289—296. 1 *Steph. Com.* 332. The substantial and beneficial owner, as distinguished from the feoffee to uses. *Id.* See *Use, Feoffee to uses*.

**CESTUY QUE TRUST.** L. Fr. He in trust for whom, or for whose benefit, another is enfeoffed or seised of lands or tenements; he who is entitled in equity to take the rents and profits of lands whereof the legal estate is vested in some other person who is called the trustee; or, in other words, he who is the real, substantial and beneficial owner of lands which are held in trust, as distinguished from the trustee. *Holthouse. Whishaw.* 1 *Cruise Dig.* 381, tit. 12, c. 1. 1 *Steph. Com.* 343. 4 *Kent's Com.* 301—305. See *Trust, Trustee*.

The late Mr. Justice Story has observed of this phrase, that it is "a barbarous Norman Law French phrase, and is so ungainly and ill adapted to the English idiom, that it is surprising that the good sense of the English legal profession has not long since banished it, and substituted some phrase in the English idiom, furnishing an analogous meaning." 1 *Story's Eq. Jur.* § 321, note. *Fide-commissary* and *beneficiary*, (the former adapted from the *fidei-commissarius* of the Roman law,) are the terms suggested by the same author as proper substitutes. *Id. ibid.* With deference, however, to the criticism of this eminent jurist, the phrase in question seems little more awkward than the similarly formed expressions *cestuy que use*, and *cestuy que vie*, and other terms of Norman origin now in daily use, for which no English equivalents have been sought or desired. Indeed the mere fact that these terms and phrases, with all their apparent rudeness of construction and want of harmony with the English idiom, have nevertheless been scrupulously retained in modern law and practice, seems to warrant the inference that their essential convenience and expressiveness have always been found effectually to outweigh any objections of the kind alluded to.

**CESTUY QUE VIE.** L. Fr. (*cestuy a qui vie.*) He for whose life lands or tenements are granted. Thus if A. grant lands to B. during the life of C., here C. is termed the *cestuy qui vie*, and B. tenant *pur autre vie*, (q. v.) 2 *Bl. Com.* 123. 1 *Steph. Com.* 242.

**CEU.** L. Fr. This, that. *Kelham.* A corruption, probably, of *ceo*, (q. v.)

Knowledge. *Saunz le ceu*; without the knowledge. *Kelham.* A corruption of *sceu*, or *sceau*.

**CEULS.** L. Fr. Those. *Kelham.* See *Ceux*.

**CEUX, Ceaux.** L. Fr. These, those. *Ceux parolz*; these words. *Litt.* sect. 1.

**CHACE.** See *Chase*.

**CHACEA, Chasea.** L. Lat. [from Fr. *chasser*, to drive.] In old English law. A chase, or chase; a driving, chasing or hunting [of animals;] (Lat. *fugatio, actus.*) *Spelman. Reg. Orig.* 258.

The road or way by which cattle are driven to pasture, called also a drove, drove-way or drift way, (Lat. *actus*, q. v.) *Spelman. Bract.* fol. 227 b, 232.

A station of game, or hunting ground, (Lat. *fugacia*;) an extent of ground less than a forest, and larger than a park, where wild animals are kept for the diversion of the chase, (*saltus et ipsa statio qua, venationis gratiâ, aluntur ferae.*) *Spelman.* See *Chase*.

**CHACEARE.** L. Lat. In old English law. To chase, drive or hunt. *Cowell.*

**CHACER, Chaser.** L. Fr. To drive, compel, oblige. *Chace, chase*; obliged, compelled. *Kelham.*

**CHAFEWAX.** [*chafe*, Fr. *chaffer*, to heat.] An officer in chancery in England who fits (by heating or melting) the wax for the sealing of writs and other instruments. *Cowell.*

**CHAFFERS.** A word used in the English statute 3 Edw. IV. c. 4, and supposed to mean wares or merchandize. *Cowell. Blount.* *Cowell* says, "we yet use *chaffering* for buying and selling." In modern parlance the latter word rather denotes a bargaining, or negotiating the terms of a bargain. *Webster.*

**CHAIER.** L. Fr. To fall. *Lesser chaier*; to let fall. *Kelham.* See *Choir*.

**CHALLENGER.** L. Fr. In old English law. To object or except to a writ or pleading. *Par taunt est le breve vicious et abatable, si il soit challenge*; for so much is the writ bad and abatable, if it be challenged. *Britt.* c. 84. *Et si le counte soit challenge pur le omission*; and if the count be challenged for the omission. *Id.* c. 85.

To object or except to a person, as a juror. *Britt.* c. 52.

To claim, or demand as a right. *Et come deux seignours ou plusurs chalengent marriage*; and where two or more lords challenge (claim) the marriage. *Britt.* c. 87. *Si nul autre ust challenge l'heritage*; if no other person have challenged (claimed) the inheritance. *Id.* c. 70.

**CHALLENGE.** [L. Fr. *challenge*, from *chaler*, *calanger*, to object, to claim; L. Lat. *calumniare, calangia*; *exceptio*.] In practice. An exception or objection taken either against persons or things. *Cowell.* The word had this large sense in old practice, a writ or count being as proper a subject of challenge as a juror. See *Chalenger*. In modern practice, however, its signification has been materially narrowed, and it is now almost exclusively used to denote

An exception or objection taken to the jurors summoned and returned for the trial of a cause, either individually, (to the polls), or collectively, (to the array). See *infra*.

Bracton, in treating of the law of challenge, (which has undergone comparatively little change since his time,) employs neither *calumnia* nor *calangia* to designate the objection taken, but calls it *exceptio contra juratores*. *Bract.* fol. 185. In Britton *challenge* (from which is derived the modern term *challenge*) is introduced. *Britt.* c. 52.

To **CHALLENGE.** [L. Fr. *chaler*, *calenger*, *calanger*; L. Lat. *calumniare, calumpniare*.] In practice. To call to answer; to accuse; to appeal, in the ancient sense of the word. See *Appeal*, and see *infra*.

To claim or assert a right. See *Chalenger*.

To dispute or call in question another's right; hence to object or except to.

To object or except to a person. To except against those that are returned to be jurors. *Co. Litt.* 155 b. This is the proper signification of the term in modern practice.

The etymology of this word has been variously explained. The Fr. *chaler*, from

which it is immediately derived, was used in several senses, as given under that word, *supra*. Lord Coke traces it, through the L. Lat. *calumniare*, *chalumniare*, and *calumpniare* from the old Fr. *caloir* or *chaloir*, to care for or foresee. *Co. Litt.* 155 b. Mr. Crabb inclines to derive it from *call*, "to challenge" meaning "to call or single out" a person by way of objection to him. *Crabb's Hist. Eng. Law*, 299. This derivation is adopted by Webster, (who explains *challenge* to mean "to call off a juror or jurors," "to demand that a juror shall not sit in trial upon a cause;") and receives great support from the fact that *appel*, the French word for challenge, is derived from the Latin *appellare*, to call upon, to call by name.

The practice of challenging jurors is mentioned by Blackstone as answering to the *recusatio judicis*, (rejection of a *judex*,) in the civil and canon laws. *Cod.* 3. 1. 16. *Decretal.* lib. 2, tit. 28, c. 36. Mr. Spence goes further, and speaks of "the Roman right of challenge" as introduced into England or confirmed, at the Conquest. 1 *Spence's Chancery*, 10 b. There was a usage of the middle ages however, which, from its connection with the old trial by peers, and the judicial combat, as well as its bearing upon the present popular sense of the term *challenge*, deserves a passing notice. This was the proceeding called an *appeal of false judgment*; by which a party dissatisfied with the judgment of a court was allowed to *appeal the peers* of whom the court was composed, that is, to *challenge and fight* them. *Espit des Lois*, liv. 28, c. 27. *Beaumanoir*, ch. 61, 67. *Defontaines*, ch. 21, 22, cited *ibid.* See *Appeal of false judgment*.

**CHALLENGE TO THE ARRAY.** An exception to the whole panel in which the jury are *arrayed*, or set in order by the sheriff in his return, upon account of partiality, or some default in the sheriff, coroner, or other officer who arrayed the panel or made the return.\* 3 *Bl. Com.* 359. *Co. Litt.* 155 b, 156 a. *Wharton's Am. Crim. Law*, 599. See *Array, Panel*.

**CHALLENGE TO THE POLLS.** [Lat. *in capita*, against the individuals.] An exception to any one or more of the individuals returned as jurors on the trial of a cause, as not being indifferent between the parties. *Termes de la ley.* *Co. Litt.* 156 a. 3 *Bl. Com.* 361. The grounds of this kind of challenge, or rather of principal challenges to the polls, are reduced by Lord Coke under four heads:—*propter honoris respec-*

*tum, propter defectum, propter affectum and propter delictum*, (qq. v.) *Co. Litt.* 156 b.

**CHALLENGE PEREMPTORY.** A privilege allowed to a prisoner in criminal cases, of challenging peremptorily a certain number of jurors, without assigning any cause. *Termes de la ley.* 4 *Bl. Com.* 353. *Co. Litt.* 156 b. This is called by Blackstone "an arbitrary and capricious species of challenge," and is permitted in capital cases in *favorem vitæ*. 4 *Bl. Com.* 353. *Co. Litt.* 156 b. The number of peremptory challenges allowed by the law of England is thirty-five in cases of treason, and twenty in cases of felony. 4 *Bl. Com.* 354. 4 *Steph. Com.* 424. *Stat. 22 Hen VIII.* c. 14. *Stat. 6 Geo. IV.* c. 50, s. 29. The same numbers were adopted by the Act of Congress, April 30, 1790, sec. 30. For the provisions made by the laws of the different states on this subject, see *Wharton's Am. Crim. Law*, 602, 604. And see *U. S. Digest*, and *Supplement*, Jurors, I. *U. S. Ann. Dig.* 1847, 1848, h. t.

**CHALLENGE FOR CAUSE.** [L. Fr. *pur cause*.] A challenge for which some cause or reason is alleged. *Termes de la ley.* 4 *Bl. Com.* 353. Thus distinguished from a peremptory challenge.

**CHALLENGE PRINCIPAL.** A species of challenge to the polls, so called, according to Lord Coke, because if it be found true, it stands sufficient of itself without leaving any thing to the conscience or discretion of the triers. *Co. Litt.* 156 b. Or, according to Sir Wm. Blackstone, (who confines it to the species of challenge *propter affectum*,) it is so called from the circumstance that the cause assigned carries with it *prima facie* evident marks of suspicion, either of malice or favor, and which, if true, cannot be overruled. 3 *Bl. Com.* 363. See 4 *Id.* 353.

A species of challenge to the array, as distinguished from a challenge to the favor. *Co. Litt.* 156 a.

**CHALLENGE TO THE FAVOR, OR FOR FAVOR,** is where the party has no principal challenge, but objects only some probable circumstances of suspicion, as acquaintance, and the like, the validity of which must be left to the determination of triers, whose office it is to decide whether the juror be favorable or unfavorable. 3 *Bl. Com.* 363. 4 *Id.* 353.

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There is some confusion in the books in regard to classifying the various subdivisions

of challenges above defined. The older authorities seem to have understood *peremptory* and *principal* challenges to signify the same thing. *Cowell*, citing *Staufd. Pl. Cor.* 157, 158. *Blount*, citing *Lamb. Eiren.* lib. 4, c. 14. *Termes de la ley*. The challenge *for cause* seems also to have been confounded with the challenge *for favor*. *Termes de la ley*. *Cowell*, citing *Kitch.* 92. Sir W. Blackstone makes principal challenges and challenges to the favor, subdivisions of one species of challenge to the polls, viz., the challenge *propter affectum*. 3 *Bl. Com.* 363. Lord Coke, on the other hand, makes them the leading divisions both of challenges to the array, and challenges to the polls. *Co. Litt.* 156 a, 156 b.

CHALUNGE. L. Fr. A claim. *Kelham*.

CHAMBER. [L. Lat. *camera*.] A term applied to courts (the Star Chamber, the Exchequer Chamber,) legislative bodies, (Chamber of Peers, Chamber of Deputies,) and other public associations; (Chamber of commerce, &c.)

In old English law. A private repository of money; a coffer. See *Camera*, *Chambre*.

CHAMBER, WIDOW'S. A portion of the effects of a deceased person, reserved for the use of his widow, and consisting of her apparel, and the furniture of her bed-chamber, is called in London the *widow's chamber*. 2 *Bl. Com.* 518.

CHAMBERS. In practice. The office or private rooms of a judge, where parties are heard, and orders made in matters not requiring to be brought before the full court; and where costs are taxed, judgments signed, and similar business transacted. 3 *Chitt. Gen. Pr.* 19, *et seq.* *Bagley's Chamber Practice*, *per tot.*

CHAMBERS. In international law. Portions of the ocean included within lines drawn from one promontory to another, or stretches of sea between adjacent headlands, (and called in England the *king's chambers*, *camera regis*,) claimed by the nation on whose coasts they are situated, as places of protection to merchantmen, where all hostilities are to cease.\* *Opinion of Sir Leo-line Jenkins*, cited *Jacobsen's Sea Laws*, 416. 1 *Peters' Adm. Dec.* 29, note. 1 *Kent's Com.* 30, 31.

CHAMBERLAIN. [L. Lat. *camerarius*, *cambellaris*, *cumbalaris*, *chamberlanus*, *chamberlingus*; from Fr. *chambellan*. *Spel-*

*man. Cowell*.] Keeper of the chamber. Originally the chamberlain was the keeper of the treasure chamber (*camera*,) of the prince or state; otherwise called treasurer. *Cowell*, voc. *Chamberlain*. See *Camerarius*. Sir William Cavendish was *treasurer of the chamber* in the 24th year of Edward III. 3 *Co.* 12.

The receiver of the rents and revenues of a city. *Cowell. Blount*. This is the modern meaning of the word in various cities of England and America.

The name of several high officers of state in England, as the Lord Great Chamberlain of England, Lord Chamberlain of the Household, Chamberlain of the Exchequer. See *Cowell. Blount. Holthouse. Wharton*. In modern times the court officer styled *chamberlain*, has the charge of the private apartments of the sovereign or noble to whom he is attached. *Brande*.

CHAMBERLARIA. L. Lat. Chamberlainship; the office of a chamberlain. *Cowell*.

CHAMBIUM. L. Lat. In old English law. Change, or exchange. *Bract.* fol. 117, 118. Probably another form of *cam-bium*, (q. v.)

CHAMBRE. L. Fr. In old English law. A private repository of money; a private treasury; a coffer. *Pension de chambre*,—*rente de chambre*; a payment of money out of personal funds, as distinguished from a rent out of lands; an annuity. *Britt.* c. 68.

CHAMP DE MAI. Fr. [Lat. *Campus Maii*.] The field or assembly of May. The national assembly of the Franks, held in the month of May. 1 *Rob. Charles V.* Appendix, Note xxxviii.

CHAMP DE MARS. Fr. [L. Lat. *Campus Martii*.] The field or assembly of March. The national assembly of the Franks, held in the month of March, in the open air. 1 *Rob. Ch. V. ub. sup.*

CHAMPART. Fr. In French law. A share or division of the profits of land; a part of the crop annually due to the landlord by bargain or custom. 4 *Bl. Com.* 135.

CHAMPARTY. See *Champerty*.

CHAMPERT. L. Fr. [L. Lat. *campers*, q. v.] A share or division of land; champerty. *Stat. Westm.* 2, c. 49. See *Champerty*.



**CHAMPERTIA.** L. Lat. Champerty. *Reg. Orig.* 183, in marg.

**CHAMPERTOR,** *Champertor, Champartor.* [L. Lat. *cambiparticeps*, q. v.] In criminal law. One who is guilty of the offence of champerty. A purchaser or promoter of other persons' suits.\* 4 *Bl. Com.* 135. See *Champerty*.

Champertors are defined by the statute *De Conspiratoribus*, (of conspirators,) 33 Edw. I. to be "those who move or cause to be moved pleas and suits, either by their own procurement, or by that of others, and sue them at their own costs, to have *part of the land* in dispute or part of the gains; (*ad campi partem, vel pro parte lucri habend.*)" This definition is in the English edition of the statutes, at the end of the statute of conspirators; but, according to Mr. Reeves, no original text appears to warrant it; and he considers it probable that it was added by some reader, to explain what followed; for the *next* statute is entitled the "statute of champerty." 2 *Reeves' Hist. Eng. Law*, 243. The Latin text is given by Cowell and Spelman, but neither of them takes any notice of the deficiency.

**CHAMPERTY,** *Champarty.* [L. Fr. *champert*; L. Lat. *campers, cambipartia*, q. v.] In criminal law. The maintenance of any man in his suit, upon condition to have part of (*partire*) the thing in dispute, when it is recovered, (or *pro parte rei quæ est in placito habenda*.) whether it be land (*campus*), or any thing out of land, or goods, or a debt, or any other thing in plea or suit. *Cowell. Blount. Reg. Orig.* 183. *F. N. B.* 172. *Stat. Westm.* 1, c. 25. *Co. Litt.* 368 b. 2 *Inst.* 208.—The unlawful maintenance of a suit, in consideration of some bargain to have part of the thing in dispute, or some profit out of it. *Hawk. P. C. b.* 1, c. 84. *Shaw, C. J.*, 1 *Pick. R.* 416. 7 *Port. (Ala.) R.* 488. *U. S. Dig.* Champerty and Maintenance, I.—A species of maintenance, being a bargain with a plaintiff or defendant *campum partire*, to divide the land, or other matter sued for, between them, if they prevail at law; whereupon the champertor is to carry on the party's suit at his own expense. 4 *Bl. Com.* 135.

In the modern sense of the word, champerty signifies the purchasing of a suit or right of suing. *Id. ibid.* Or rather the purchase of an interest in a thing in dispute, with the object of maintaining and taking part in the litigation. *Tindall, C. J.*, 7

*Bing.* 369. *Hollhouse.* The purchase of land, pending a suit concerning it, is champerty. 4 *Kent's Com.* 449. See 2 *Story's Eq. Jur.* §§ 1048—1054, and notes.

The distinction between *maintenance* and *champerty* seems to be this; where there is no agreement to divide the thing in suit, the party intermeddling is guilty of maintenance only, but where he stipulates to receive part of the thing in suit, he is guilty of champerty. 4 *Chitty's Bl. Com.* 135, note. Hence the rule of Lord Coke, that every champerty is maintenance, but every maintenance is not champerty. 2 *Inst.* 208. See *Maintenance*. See the English authorities on this subject, cited in 4 *Steph. Com.* 264, note (l). For the American law of champerty, see 4 *Kent's Com.* 449, and note. *U. S. Dig. & Suppl.* Champerty and Maintenance. *U. S. Ann. Dig.* 1847, 1848, h. t. 2 *N. Y. Rev. St.* [288, §§ 71—74.] 216, §§ 72—75. *Id.* [691,] 576, §§ 5—7. *Lewis' U. S. Crim. Law*, 493—498.

**CHAMPION.** [L. Lat. *campio*.] He who, in the trial by battel or combat (*campus* or *duellum*), fought either for the tenant or demandant. 3 *Bl. Com.* 339. *Certator pro alio datus in duello.* *Hottom. in Verb. Feud.*

One who fought in his own cause. *Cowell. Blount.* See *Campio*.

**CHANCELLOR.** [L. Lat. *cancellarius*; L. Fr. *chancelier*.] The presiding judge in the court of chancery. See *Chancery*.

In England, the Lord High Chancellor is the highest judicial officer of the realm, and in point of precedence ranks above every temporal lord. 3 *Bl. Com.* 46. 1 *Wooddes. Lect.* 95. 3 *Steph. Com.* 407. He is, however, much more than a judicial officer, being also keeper of the great seal, a privy counsellor, and prolocutor of the House of Lords. 3 *Bl. Com.* 47.

In American law, the judges of such state courts as are exclusively courts of equity, are called chancellors, but the office is strictly a judicial one. See *Chancery*.

The title and office of *chancellor* are generally supposed to be derived from the *cancellarius*, (q. v.) of the lower Roman empire, from which source they passed to the various modern kingdoms of Europe, including the Anglo-Saxons, among whom the office is well ascertained to have existed. Sir Henry Spelman has given a list of all the chancellors of England from the earliest Saxon period. *Gloss. voc. Cancellarius*. According to Selden, the oldest mention in good authority, of the name of chancellor

of England, is in the time of Edward the elder, about the year 920, who constituted Turketill (*Turketulus*) his chancellor with very transcendent powers. *Selden's Office of Chancellor*, (Works, vol. iii. 1468,) cited 1 Wooddes. *Lect.* 96, 97. 1 *Spence's Chancery*, 78, 79. The word *chancellor* itself seems to have been formed immediately from the L. Fr. *chancelier*, or *chauncellier*. The Saxon word was *boceras*; but the Lat. *cancellarius* was always used in charters and records, as well as by the old chroniclers. *Spelman*, voc. *Cancellarius*. For the original derivation of the term, see *Cancellarius*.

**CHANCELLOR OF A DIOCESE, OR OF A BISHOP.** In English ecclesiastical law. An officer appointed to hold the bishop's court for him, and to assist him in matters of ecclesiastical law. 1 *Bl. Com.* 382. *Tomlins*.

**CHANCELLOR OF THE DUCHY OF LANCASTER.** In English law. An officer before whom, or his deputy, the court of the duchy chamber of Lancaster is held. This is a special jurisdiction concerning all manner of equity relating to lands holden of the king in right of the Duchy of Lancaster. *Hob.* 77. 3 *Bl. Com.* 78.

**CHANCELLOR OF THE EXCHEQUER.** A high officer of the British crown, who sometimes sits in the Exchequer with the regular judges or barons of the court, where his duty is to take care of the interests of the crown. 3 *Bl. Com.* 44. *Wharton's Lex*. In this capacity he has precedence above the barons. *Brande*. He seems to have originally actually exercised the functions of a chancellor, or, in the phrase of the old books, "to have been created for the *qualifying of extremities* in the exchequer." *Cowell*. His legal functions, however, have long been merely formal, and by the recent statute 5 Vict. c. 5, abolishing the equity side of the Court of Exchequer, seem now to be entirely extinguished. The most important duties of this officer concern the management of the royal revenue, he being the principal finance minister of the government. 3 *Bl. Com. ub. sup.* This office is commonly united to that of first lord of the treasury, when the premier happens to be below the peerage. *Brande*. See *Exchequer*.

**CHANCE MEDLEY.** [from Fr. *chance*, accident, and *meler*, to mingle. A casual meeting or affray.] In criminal law. The accidental killing a man in self defence in a sudden rencounter; a species of excusa-

ble homicide. 4 *Bl. Com.* 184. 3 *Inst.* 55, 57. *Foster's Crown Law*, 275, 276. — Manslaughter on a sudden quarrel. 4 *Steph. Com.* 103, note (t).

Chance medley is distinguished by Blackstone from homicide *per infortunium*, or by misadventure, (4 *Bl. Com.* 182;) though the terms seem to be confounded in the old books, (*Staundf. Pl. Cor.* lib. 1, c. 8. *Termes de la ley*. *West's Symbolog.* par. 2, tit. Indictments, sec. 5, cited in *Blount*;) and by so late a writer as Whishaw. It is also sometimes confounded with *chaud-medley*, (q. v.) Sir Michael Foster, however, considers the difference between *chance medley*, and *chaud-medley*, in point of sense, as very small. *Fost. Cr. Law*, 296, note.

**CHANCERY, or COURT OF CHANCERY.** [L. Lat. *cancellaria*, *curia cancellaria*; L. Fr. *chauncerie*, *chauncelrie*, *court de chauncellerie*.] In English and American law. A court of equity; the name given to a court in which equity is either exclusively or chiefly administered; the court of the chancellor. Sometimes used as a synonyme of equity, or proceedings in equity.\* See *Equity*.

In English law. A court of common law held by the chancellor, called the ordinary or legal court, where is kept the *officina justitiæ*; out of which issue all original writs, commissions, &c., under the great seal, of which the Lord Chancellor is keeper.\* 3 *Bl. Com.* 47, 48.

In England the court of chancery is the highest court in the kingdom, next to the parliament, and is both a court of equity and of common law. Its jurisdiction in the latter character, however, though of superior antiquity, and called the *ordinary* jurisdiction of the court, (and in respect of which only it is called a court of record) has been completely overshadowed by its equitable or *extraordinary* jurisdiction, which embraces the principal and most important business of the court. 3 *Bl. Com.* 46—49. 3 *Steph. Com.* 407—410.

There are in fact five superior courts of chancery in England, viz. the *High Court of Chancery*, presided over by the Lord High Chancellor of Great Britain, to whom an appeal lies from the others; the *Court of the Master of the Rolls*, who is assistant to the Lord Chancellor, when present, and his deputy when absent; and the *Court of the Vice-Chancellor of England*, created by stat. 53 Geo. III. c. 24; and two additional vice-chancellors have been recently appointed with powers precisely similar to

those of the Vice-Chancellor of England. *Wharton's Lex.*

In American law, the terms *chancery*, and *court of chancery* have been adopted to some extent, though the corresponding terms *equity* and *court of equity* are more generally used. In some of the states (as Delaware, Virginia, South Carolina, Alabama and Mississippi) equity powers are exercised by distinct and independent tribunals, and to these the appellation of *courts of chancery* is usually given. In most of the states, however, the jurisdiction of law and equity is vested in the same tribunal, though exercised by a different course of procedure. See 4 *Kent's Com.* 163, 164, note. As to the origin and history of the court of chancery, see 1 *Story's Eq. Jur.* ch. 2. 1 *Spence's Chancery*, part. 2, b. 1.

**CHANGER.** An officer formerly belonging to the king's mint, in England, whose business was chiefly to *exchange* coin for bullion brought in by merchants and others. It is mentioned in the statute 2 Hen. VI. c. 12, where it is written, (after the old way,) *chaungeour*. *Cowell. Blount.*

**CHANTER, Chaunter.** L. Fr. To declare aloud; (literally, to sing or chant;) to pronounce or find, as the verdict of a jury. *Si les recognitors de le assise chaunta pur le plaintiff*; if the recognitors of the assise find for the plaintiff. *Litt.* sect. 442. Translated in some of the editions of Coke Littleton, "*chante* for the plaintiff."

**CHANTRY, Chauntry.** [L. Lat. *cantaria*.] In old English ecclesiastical law. A church or chapel endowed with lands or other yearly revenues for the maintenance of one or more priests to sing [or chant, *cantare*,] mass daily for the souls of the donors, and such others as they appointed. *Termes de la ley. Cowell. Spelman, voc. Cantaria.* See 4 Co. 96, *Adams & Lambert's case*, where a will granting such an endowment is given.—A private religious foundation, of which there were many in England before the Reformation, established for the purpose of keeping up a perpetual succession of prayers for the prosperity of some particular family while living, and the repose of the souls of those members of it who were deceased; but especially of the founder and other persons specifically named by him in the instrument of foundation. *P. Cyclopædia.* They were usually little chapels, or particular altars in some cathedral or parochial church. *Blount.* See *P. Cyclopædia.*

**CHAPEL.** [L. Lat. *capella*.] In ecclesiastical law. A minor religious edifice, in which divine service is celebrated in the same manner as in the parochial church, but generally of more modern erection, and of a subordinate and auxiliary character.\* 3 *Steph. Com.* 151.

**CHAPEL OF EASE.** In English ecclesiastical law. A chapel founded in general at some period later than the parochial church itself, and designed for the accommodation of such of the parishioners as, in course of time, had begun to fix their residence at some distance from its site; and so termed because built in aid of the original church.\* 3 *Steph. Com.* 151. *Watson's Ch. L.* 645, cited *ibid.* *Cowell.* Places of worship of modern foundation, especially those in towns, are called *chapels of ease*, being erected for the ease and convenience of the inhabitants, when they have become too numerous for the narrow limits of their parish church. *P. Cyclopædia.*

**CHAPELRY.** [L. Lat. *capellaria*.] The precinct and limits of a chapel. The same thing to a chapel, as a parish is to a church. *Termes de la ley. Cowell. Blount.*

**CHAPTER.** [L. Fr. *chapitre*, L. Lat. *capitulum*.] In old English law. A summary in writing of such matters as were to be inquired of, or presented before justices in eyre, justices of assize, or of the peace, in their sessions. *Stat. Westm.* 1, c. 27. *Termes de la ley. Britt.* c. 3. These chapters, (otherwise called *capitula itineris*,) were delivered to the justices from the king for their direction; and, upon the opening of their courts were first read over to the grand inquests, and then delivered to them in writing. *Termes de la ley. Cowell. Crabb's Hist. Eng. Law*, 130, 162. They were afterwards called *articles*. *Mirr.* lib. 3. *Cowell. Blount.* See *Capitula*.

**CHAPTER.** [L. Lat. *capitulum*, q. v.] In English ecclesiastical law. An assembly of the prebendaries and canons in a cathedral, conventual or collegiate church; called in the old books *congregatio clericorum*, an assembly of clerks or congregation of clergymen. *Termes de la ley. Cowell. Co. Litt.* 103, 300. The chapter is presided over by the dean, and acts as the council of the bishop, taking the place of the prior and convent, who acted in that capacity before the Reformation. 1 *Bl. Com.* 382. 3 Co. 75. *Bract.* fol. 12. 3 *Steph. Com.* 67. See *Dean*.

This word is also applied to the meetings

of other religious communities when assembled for business, and sometimes to the *places* where such meetings are held. *Termes de la ley*. Cowell. But these are more properly termed chapter-houses. *P. Cyclopædia*.

CHARE. L. Fr. A plough. *Stat. Westm.* 1, c. 1.

CHARETTE. L. Fr. A cart. *Stat. Westm.* 1, c. 1, 32. *Britt.* c. 1. *Charretter*; a carter. *Kelham*.

CHARGE. [Lat. *onus*.] A burden; an incumbrance or lien upon land; a duty or liability attached to, or obligation imposed upon a person.\* 3 *Co.* 14, *Harbert's case*. 1 *Steph. Com.* 348. 3 *Id.* 637.

To CHARGE. [Lat. *onerare*.] To bind; to make or hold liable; to subject to, or burthen. Thus, land is said to be *charged* with a covenant of warranty, a debt, execution, (3 *Co.* 12, 14,) or trust. 4 *Kent's Com.* 540. So a person is said to be *charged* with a duty or liability. 3 *Co. ub. sup.* "If two be bound in an obligation, there the *charge* shall survive: so it appears that when land shall be *charged* by any lien, the *charge* ought to be equal, and one alone shall not bear all the burthen, and the law on this point is grounded on great equity: but in all the cases at the common law, if the party who should be *charged* had aliened the land *bona fide*, before any action brought, the land in the hands of the purchaser was not subject to any *charge* or execution." *Id.* 14.

In practice. To subject land or person to execution. 3 *Co. ub. sup.* To charge a person in execution, is to take or arrest him by virtue of a writ of execution. 1 *Tidd's Pr.* 365, 367. 4 *Term R.* 367.

CHARGE. In practice. An address to a jury impanelled in a cause, by the presiding judge, after the case has been closed on both sides, recapitulating and commenting upon the testimony adduced by the respective parties, and instructing the jury in any matter of law arising upon it.\* 3 *Steph. Com.* 617. Story, J., 10 *Peters' R.* 657, 660. In English practice this is called the *summing up*, (q. v.) 2 *Tidd's Pr.* 367. 1 *Archb. Pr.* 195.

An address to the grand jury or inquest of a county, by the presiding judge of the Court of Oyer and Terminer, or other principal criminal court, instructing them in their duty.\* 4 *Bl. Com.* 303.

To charge. To deliver such an address.

To CHARGE. In equity pleading. To make a distinct and formal allegation in a bill, usually for the purpose of anticipating and meeting some allegation or defence on the part of the defendant.\* If the plaintiffs are aware of any defence which may be made, and have any matter to allege which may avoid it, the general charge of confederacy is usually followed by an *allegation* that the defendants pretend or set up the matter of their defence, and by a *charge* of the matter which may be used to avoid it. This is commonly called the *charging part* of the bill. *Mitford's Ch. Pl.* 43. *Story's Eq. Pl.* § 31.

CHARGE. In equity practice. A statement in writing made by a party to a suit in equity, before a master of the court, of the items with which the opposite party should be debited or should account for, or of the claim of the party making it. It is more comprehensive than a *claim*, which implies only the amount due to the person producing it, while a *charge* may embrace the whole liabilities of the accounting party. *Hoffman's Master in Chanc.* 36.

CHARGE AND DISCHARGE. In equity practice. The mode or form of accounting before a master. Where a decree or order of the court directs an account to be taken and examined before a master, in such case the plaintiff delivers in an account before the master in the form of a *charge*, (q. v.) against the defendant; which being examined and gone through, the defendant or adverse party must bring in his *discharge*, (q. v.) against such *charge*; which being likewise examined and gone through, the master will exercise his judgment upon the evidence, and allow or disallow the *charge* or any part of it, as he thinks proper, and so, *e contra*, as to the *discharge*, after which the report is made. *Cunningham. Whishaw.* 2 *Daniell's Chanc. Pr.* 1420—1422. *Hoffman's Mast. in Chanc.* 36—39.

CHARGEANT, *Chargaunt*. L. Fr. [from *charger*, q. v.] Weighty, heavy; forcible; penal; expensive. *Kelham*.

CHARGER. L. Fr. To load. *Chargeez*: loaded, laden. *Kelham*.

CHARGES. In practice. Expenses incurred in a suit at law or in equity, or other judicial proceeding; including such as do not come under the technical denomination of *costs*. The expression "*costs and charges*" is of frequent occurrence in practice. See 2 *Wils.* 267, 268.

**CHARITABLE.** This word, in the expressions "*charitable uses*," "*charitable trusts*," is understood in a very large sense, comprising not only gifts for the benefit of the poor, but endowments for the advancement of learning, or institutions for the encouragement of science and art, and for any other useful and public purpose, as well as donations for pious or religious objects. 3 *Steph. Com.* 229. See 1 *Id.* 428, and note (b). 2 *Chitt. Bl. Com.* 273, 274, and notes. 2 *Kent's Com.* 285—288, and notes. 2 *Story's Eq. Jur.* §§ 1160—1164. *Duke on Charit. Us.* 105, 113, cited *ibid.* *U. S. Digest and Supplement*, Charities and Charitable Uses. *U. S. Ann. Dig.* 1847, 1848, h. t.

**CHARITY.** A charitable gift or bequest; a gift or bequest to charitable uses or purposes. See *Charitable*. Described by Lord Camden as "a gift to a general public use, which extends to the rich as well as to the poor." *Ambl.* 651. See 2 *Story's Eq. Jur.* ch. 32. *U. S. Digest and Supplement*, Charities and Charitable Uses.

**CHARNEL.** L. Fr. [*L. Lat. carnalis.*] Of the same flesh, (or blood.) *Charnels a-mys*; relations by blood. *Britt. c.* 52.

**CHARTA, Carta.** L. Lat. [*Lat. symbolum, tabulæ.*] In old English law. A charter, or deed; a writing under seal, by which conveyances of lands, contracts, covenants and the like were evidenced and ratified; (*scriptum obsignatum, quo prædictorum cessiones, contractus, conventiones et hujusmodi ratæ fiunt.*) *Spelman. Bract.* fol. 33 b—38. *Id.* fol. 40. So called from the material (*charta*, paper,) upon which it was written. 2 *Bl. Com.* 295. See *Charter, Deed. Charta de feoffamento*; a charter of feoffment. *Bract.* fol. 33 b. *Charta de quiete clamantia*; a charter of quit claim. *Id. ibid.* *Charta de confirmatione*; a charter of confirmation. *Id. ibid.* See *Carta. Charta [carta] de non ente non valet.* A deed of a thing not in existence is void. *Co. Litt.* 36 a.

Any signal or token by which an estate was held; as a horn, &c. *Willelmus, filius Nigelli, tenuit custodiam forestæ de Bernwode de domino rege per unum cornu, quod est charta prædictæ forestæ*; William, son of Nigel, held the ward of the forest of Bernwode of the king by one horn, which is the *charter* of the said forest. *Kennett's Par. Ant.* 73. *Cowell.*

A royal grant of privileges or liberties,

(*charta regia*,) either to an individual, as a charter of pardon, (*carta perdonationis*,) to a public body, (see *Charter*,) or to a whole nation, as *Magna Charta*, the Great Charter; *Charta de Foresta*, the Charter of the Forest. See *Magna Charta*.

The term *charta* was introduced into England by the Normans in lieu of *chirographum*, which was the Latin word used among the Saxons, answering to the vernacular *boc*. *Normanni chirographa chartas vocabant.* *Ingulph. apud Spelman.* 1 *Reeves' Hist. Eng. Law*, 88. Lord Coke distinguishes *charta*, (a charter,) from *factum*, (a deed;) the former touching inheritance, not so the latter, unless it have some other additions. *Co. Litt.* 9 b. Bracton, however, applies both words to royal grants. *De chartis vero regis et factis regum, &c.* *Bract.* fol. 34. The *ch* in this word seems to have always been pronounced hard, (after the Gr. *χαρτης*;) which led to the practice of writing the word *carta*, in which form it occurs in the Register, and in some of the old writers. *Reg. Orig.* 157—160. *Co. Litt.* 36 a.

**CHARTA COMMUNIS.** L. Lat. In old English law. A common or mutual charter or deed; one containing mutual covenants, or involving mutuality of obligation; one to which both parties might have occasion to refer, to establish their respective rights. *Bract.* fol. 33 b, 34. Hence these deeds were executed in two parts, each party keeping one, and were otherwise termed *chartæ cyrographatæ*, chirographed charters. *Id. ibid.*

**CHARTA CYROGRAPHATA.** L. Lat. In old English law. A chirographed charter; a charter executed in two parts, and cut through the middle, (*scinditur per medium*,) where the word *cyrographum*, or *chirographum* was written in large letters. *Bract.* fol. 34. See *Chirograph*.

**CHARTA (or CARTA) DE FORESTA.** L. Lat. In old English law. The charter of the forest. A charter or ordinance containing the laws of forest, granted in the ninth year of the reign of Henry III., the provisions of which were previously included in *Magna Charta*. 1 *Reeves' Hist. Eng. Law*, 254, et seq. *Crabb's Hist. E. L.* 136, c. 11.

**CHARTA PARTITA.** L. Lat. [literally, a deed divided.] A charter party. *Towns. Pl.* 112. 3 *Kent's Com.* 201. See *Charter party*.

**CHARTEL.** L. Fr. In old English law. A letter of defiance or challenge to single combat, in use during the period when trial by battel was practised. *Cowell. Blount.*

**CHARTER.** [L. Lat. *charta, carta*; L. Fr. *chartre*, (qq. v.)] In old English law. A written instrument under seal, containing the evidence of things done between man and man.\* *Cowell. Holthouse.* Otherwise called a private charter. *Bract.* fol. 33 b. A conveyance of lands; a contract, covenant or other sealed instrument, (*scriptum obsignatum.*) *Spelman*, voc. *Charta.* This term was much more comprehensive than the modern *deed*, which has taken its place; and was used as an English word, (framed probably from the Fr. *chartre*,) as early as the time of Bracton, who gives the following as an *English* phrase, (*secundum quod Anglice dicitur*)—*þes hæð bothe writ and charter*; signifying that a party had both a charter or deed of land, and a writ, that is, a letter of attorney to deliver possession. *Bract.* fol. 40. The term *charter* was not obsolete when Blackstone wrote, and was particularly appropriate to a conveyance by feoffment. 2 *Bl. Com.* 295. *Co. Litt.* 36 a. And as to the distinction between charters and deeds, see *Maddox Formul. Angl. Diss.* p. 2. *Mad. Hist. Exch.* pref. ep. p. 8.

An instrument in writing, containing a grant from the crown to any person or persons, or to any body politic, of any rights, liberties, franchises or privileges.\* Otherwise called a royal charter (*charta regia*). *Bract.* fol. 33 b. Some of the old acts of parliament were in the form of charters. 8 *Co. The Prince's case.* These royal charters are preserved in the *Charter Rolls*, the series of which commences in the year 1199, and terminates in 1516, when that species of royal diploma ceased; and all the written acts of the sovereign in the nature of grants were thenceforward made in the form of *letters patent*, and recorded upon the *Patent Rolls*. *Hubback's Evid. of Succession*, 616. See *Charter Rolls*.

**CHARTER.** In old Scotch law. A disposition made by a superior to his vassal, for some thing to be performed or paid by him. 1 *Forbes' Inst.* part 2, b. 2, c. 1, tit. 1. A writing which contains the grant or transmission of the feudal right to the vassal. *Ersk. Inst.* b. 2, tit. 3, § 19.

**CHARTER.** In modern law. A grant in writing of certain privileges and franchises, (usually to a corporation) by the supreme power of a state; an act of incor-

poration. In this sense, the original meaning of the term *charter* as applied to grants by the sovereign to individuals or corporate bodies is, with some modification, retained. See *Charter, supra.*

**CHARTER OF THE FOREST.** See *Charta de Foresta.*

**CHARTERER.** In mercantile law. One who charters (i. e. hires or engages) a vessel for a voyage; a freighter. 2 *Steph. Com.* 184. 3 *Kent's Com.* 137.

**CHARTER LAND.** [Sax. *boc land.*] In old English law. Land held by charter, (deed) or written evidence; deed land, bookland. Freehold lands were so called, as distinguished from copyhold. *Termes de la ley. Co. Litt.* 6 a. 2 *Bl. Com.* 90. See *Bocland.*

**CHARTER OF PARDON.** [L. Lat. *charta* or *carta perdonationis*.] In English criminal law. A charter or instrument under the great seal, by which a man is forgiven a felony, or other offence committed against the king's crown and dignity. *Bro. Abr.* Charter of Pardon. *Cowell.* 4 *Bl. Com.* 400, 402. See the old form, *Reg. Orig.* 288, 308; and see 2 *Reeves' Hist. Eng. Law*, 437.

**CHARTER PARTY.** [L. Lat. *charta partita*.] In mercantile law. A contract by which an entire ship, or some principal part thereof, is let to a merchant for the conveyance of goods on a determined voyage to one or more places. *Abbott on Ship.* [241] 315.—A contract of affreightment in writing, by which the owner of a ship lets the whole or a part of her to a merchant, for the conveyance of goods on a particular voyage, in consideration of the payment of freight. 3 *Kent's Com.* 201. Expressively called a mercantile lease of a ship. *Id.* 302. See 2 *Steph. Com.* 184. See *Affreightment.*

A charter party contains stipulations by both parties as to the vessel and voyage, the cargo, and amount of freight to be paid, &c. It is signed by both, and is executed in parts, one being kept by each party. Its name (more clearly expressed by the Lat. *charta partita*, a deed divided, and probably immediately derived from the Fr. *chartre parti*,) has preserved a relic of the ancient practice of *dividing* indentures after execution into two parts, of which each party kept one. 3 *Kent's Com.* 201. *Abbott on Ship.* [241, 242,] 315, 316. See *Chirograph, In-*

*denture*. Hence it is called in the old books *a pair of indentures*. *Blount*.

**CHARTER ROLLS.** Rolls preserved amongst the ancient English records, containing the royal charters from the year 1199 to 1516. They comprise grants of privileges to cities, towns, bodies corporate, and private trading companies; grants of markets, fairs, and free warrens, of creations of nobility, of privileges to religious houses, &c. *Hubback's Evid. of Succession*, 616, and notes, *ibid*.

**CHARTIS, (or CARTIS) REDDEN-DIS.** See *De cartis reddendis*.

**CHARTRE.** L. Fr. A charter. *Quant a garnement del escrit, que home appelle chartre*; as to that garment (vestment or clothing) of writing which men call a charter. *Britt. c. 39*.

**CHARUE.** L. Fr. A plough. *Bestes des charues*; beasts of the plough. *Artic. sup. Chart. c. 12. Britt. c. 21*.

**CHASCUN.** L. Fr. Every. *Assiz. de Jerus. c. ix*.

**CHASE, Chace.** [L. Lat. *chasea, chacea*.] In English law. A large extent of woody ground, (Lat. *saltus*), less than a forest, and larger than a park, lying open and privileged for wild beasts, and wild fowl. *Termes de la ley. Co. Litt. 233 a. Spelman, voc. Chacea. Manwood, 52. 2 Bl. Com. 38, 414, 416*.—A franchise granted by the crown to a subject, empowering the latter to keep for his diversion, within a certain precinct so called, the wild animals of chase, (which in a legal sense are the same with those to which the right of forest extends,) but not authorizing the establishment of forest law within such precinct. *2 Steph. Com. 21. 1 Crabb's Real Prop. 91, § 97; 487, § 629. See Forest, Park*.

In one sense, *chase* is a generic term, embracing both a forest and a park. Thus, a forest is called a royal chase, a park an enclosed chase. *2 Bl. Com. 38*. Every forest, says Lord Coke, is a chase, but every chase is not a forest. *Co. Litt. 233 a*. It differs from a forest in being of smaller extent, and not endowed with so many liberties, nor subject to the forest laws; and from a park, in being of larger size, and not enclosed. *Termes de la ley. 2 Bl. Com. 38. Spelman, voc. Chacea*.

**CHASEA.** L. Lat. A chase. *Spelman, voc. Chacea. See Chace, Chacea*.

**CHASTELL.** L. Fr. A castle. *Stat. Westm. 1, c. 17*.

**CHATE.** L. Fr. Bought. *Kelham. See Achate, Achater*.

**CHATEAUX.** L. Fr. [pl. of *chatelle*, q. v.] Chattels. *Litt. sect. 323*.

**CHATELLE, Chatell, Chatel.** L. Fr. [pl. *chateux, cateux, chateaux*.] A chattel. *Reg. Orig. 93 b, nota. Chatelle moeble, a moveable or personal chattel. Id. ibid. Britton writes the word chatell, and chatel. Britt. cc. 27, 101*.

**CHATEUX, Cateux.** L. Fr. [pl. of *chatelle*.] Chattels. *Britt. cc. 1, 20; 26, 27, 28, 101. Litt. sect. 321. Reg. Orig. 93 b, nota. Chateux moebles, moveable or personal chattels. Id. ibid. Chateux, and chateaux are used by Britton, Littleton and the Register. Par lour avers et par lour chateux*; by their beasts and by their chattels. *Britt. c. 20. Biens et chateux*; goods and chattels. *Id. c. 28. Cateux* is used in the Norman laws. *LL. Will. Nothi 4, apud Dufresne, l. 409. Cateux meubles et immeubles. Id. ibid. 2 Bl. Com. 386, note (e)*.

**CHATTEL.** [L. Fr. *chatelle*, L. Lat. *captale, catallum*.] Any article or subject of property, moveable or immoveable, not amounting to a freehold.\* *1 Steph. Com. 262. Chattel* is a very comprehensive term in our law, and includes every species of property, which is not real estate or a freehold. *2 Kent's Com. 342*. It is more frequently used (like *bona, goods*), in the plural number. See *Chattels, Catalla*.

**CHATTELS, formerly written CATALS.** [L. Lat. *catalla*, L. Fr. *chateux, cateux*.] Moveable goods, and all other property or estate, not amounting to a freehold.

Chattels were formerly divided into moveable and immoveable (*moebles et nient moebles*;) a division borrowed from the *bona mobilia et immobilia* and *res mobiles et immobiles* of the civil law. *Reg. Orig. 93 b, nota. LL. Will. Nothi, apud Dufresne, cited 2 Bl. Com. 386, note (e). Cowell, voc. Catalls. Bract. fol. 102*. The present division of chattels into real and personal was introduced in the reign of Edward III. *3 Reeves' Hist. Eng. Law, 15. See Chatels Real, Chattels Personal*.

The term *chattels* is a more comprehensive one than *goods*, as it includes animate as well as inanimate property. *2 Chitt. Bl. Com. 383, note*. In a devise, however, they seem to be of the same import. *Shap.*

*Touch. 447. 2 Fonbl. Equity, 335.* In practice, they are almost always united in the expression *goods and chattels*, which is of very ancient date. *2 Steph. Com. 65.* See *Bona et catalla, Goods and Chattels, Effects, Personal estate, Moveables.*

As to the etymology of this word, the singular *chattel* seems to be immediately formed from the Fr. *chatelle*, or *chatel*, (q. v.); the plural *chattels*, (or, as it was formerly written, *catalis*,) is supposed to be derived from the L. Lat. *catalla*, the *ch* being pronounced hard, as in the word *charta*, which is evident from the form of the old Norman plural, *cateux*, (q. v.) *Catalis* is the form used in the *Termes de la ley*, and *Cowell*. As to any further derivation, *catalla* or *catalia* is clearly shown by Spelman to be merely a contracted form of writing *capitalia*, which, with the singular *capitale*, or *capitale*, occurs frequently in the Saxon and early English laws. See *Capitale*. The Fr. singular *chatell*, may have been formed from the latter word. The primary meaning of *capitalia* was animals, beasts of husbandry, (otherwise called *averia*, q. v.) or *cattle*; in which last word it is still identically retained. This will appear from the extracts given under *capitale*, (q. v.)

*Capitalia* is derived by Spelman from *capita*, heads; a term still popularly applied to beasts, as "so many *heads of cattle*." When the word took the form *catalla*, it continued to retain this primary meaning, but gradually acquired the secondary sense of *moveables* of any kind, inanimate as well as animate, and finally became used to signify interests in lands. *1 Steph. Com. 262. Dufresne II. 409. Bract. fol. 159 b. 2 Reeves' Hist. Eng. Law, 52.*

**CHATELS REAL.** Such chattels as concern, are annexed to, or savor of the *realty*; as terms for years of land, and mortgages; and, in English law, next presentations to a church, estates by statute merchant, statute staple, *elegit*, &c. *2 Bl. Com. 386. Co. Litt. 118 b. 1 Steph. Com. 262, 263. 2 Kent's Com. 342. 1 Crabb's Real Prop. 5 et seq.* They are so called, as being interests issuing out of, or annexed to real estates, of which they have one quality, viz., *immobility*, which denominates them real, but want the other, viz., a sufficient legal indeterminate *duration*; and this want it is that constitutes them *chattels*. *2 Bl. Com. 386.* They are otherwise denominated estates less than freehold. *1 Steph. Com. 262.*

Mr. Stephen observes of chattels real

that they "are not properly the subjects of property, but rather modifications of property, or species of estates in a certain kind of subjects, viz., in things real. When considered, indeed, in reference to the distinction between real and personal estate, they are held to fall under the latter denomination, their incidents being in general the same with those of property in moveables; but as regards the distinction between things real, and things personal, they appertain to the division of things real. *2 Steph. Com. 65.*

**CHATELS PERSONAL**, otherwise called **THINGS PERSONAL**, comprise all sorts of things moveable, as goods, plate, money, jewels, implements of war, garments, animals and vegetable productions; as the fruit or other parts of a plant, when severed from the body of it, or the whole plant itself, when severed from the ground. *2 Steph. Com. 66, 67. 2 Bl. Com. 387.* Besides things moveable, they include also certain incorporeal rights or interests, growing out of, or incident to them, such as patent rights and copyrights, to which Mr. Stephen has given the name of *incorporeal chattels*. *2 Steph. Com. 72.*

There are, however, many chattels, which, though they be even of a moveable nature, yet being necessarily attached to the freehold, and contributing to its value and enjoyment, go along with it, in the same path of descent or alienation. This is the case with the *deeds* and other papers which constitute the muniments of title to the inheritance, and so with heir looms. *2 Kent's Com. 343.* A box of charters or deeds was always classed with chattels real. *Crompt. Just. 33 b. Termes de la ley. Cowell.*

**CHATTEL INTEREST.** An interest in corporeal hereditaments, not amounting to a freehold, as distinguished from a freehold interest; such as an estate for years in land. *1 Steph. Com. 262. 2 Kent's Com. 342.* See *Burton's Real Prop. ch. 5.* A subject of ownership, though in its nature real, may be owned in such a way as to constitute a chattel interest, or personal estate. *1 Hilliard's Real Prop. 51.*

**CHAUDMEDLEY.** [L. Fr. *chaud melle*, from *chaud*, hot, and *mester*, *meler*, to mingle; L. Lat. *calida melleia*.] In criminal law. The killing of a person in an *affray*, in the heat of blood, and while under the influence of passion; and is thus distinguished from *chance medley*, (with which, according to Blackstone, it is sometimes confounded,) which is killing in a *casual*



**affray in self defence.** 4 *Bl. Com.* 184. *Brak. Inst.* b. 4, tit. 4, § 40.

**CHAUMPERT.** L. Fr. A kind of tenure mentioned in a patent of 35 Edw. III. *Cowell. Blount.*

**CHAUNCELLERIE, Chauncelrie.** L. Fr. Chancery. *Britt.* c. 21. *Chauncerie.* *Id.* c. 26.

**CHAUX.** L. Fr. Those. *Kelham.*

**CHAYE.** L. Fr. Fallen. *Id.*

**CHEAT or CHEATING.** In criminal law. The offence of defrauding, or endeavoring to defraud another of his known right, by means of some artful device, contrary to the plain rules of common honesty. *Hawk. P. C.* b. 1, c. 71. — The offence of fraudulently obtaining the property of another by any deceitful and illegal practice or token (short of felony,) which affects or may affect the public. *Steph. Crim. Law,* 93. See 2 *Russell on Crimes,* 275—317. b. 4, c. 31. *Wharton's Am. Crim. Law,* 444—463. *Lewis' U. S. Crim. Law,* 150—199. *U. S. Dig. & Supplement, Cheat.* *U. S. Ann. Dig.* 1847, 1848, h. t.

**CHEAUNCE.** L. Fr. An accident. *Kelham.*

**CHECER, Cheser.** L. Fr. To fall. *Checer in debat*; to come in question or debate. *Kelham.* See *Cheir.*

**CHECK, Cheque.** A written order or request addressed to a bank, or to persons carrying on the business of bankers, by a party having money in their hands, requesting them to pay, on presentment, to a person therein named, or to him or bearer, or order, a named sum of money.\* *Chitty on Bills,* 511, (Perkins' ed. 1849.) *Story on Prom. Notes,* § 487.

A check nearly resembles a bill of exchange, yet it differs from it in many particulars. See 3 *Kent's Com.* 75, 104, note. *Story on Prom. Notes,* § 489. *Story, J.,* 2 *Story's R.* 512.

**CHEF, Chefe.** L. Fr. A, or the head. *Chefe del an*; the head or beginning of the year. Translated by *Kelham* the end of the year. See *Caput anni.*

Chief. See *Chief.*

**CHEIR, Cheyr, Chaier, Charer, Checer, Cheser.** L. Fr. To fall; to abate; to fall out, to happen. *Kelham.*

*Chet, cheyt, chiet*; it falls or happens. *Chet le brefe*; the writ abates. *Britt.* c. 48, 74. *Cheyt lassise*; the assise falls or abates. *Id.* c. 51.

*Cherra, chirra*; it will fall. *Lassise cherra*; the assise shall fall or abate. *Britt.* c. 75.

*Cheie, cheye, cheu*; fallen; happened. *Kelham. L. Fr. Dict.*

**CHEMIN, Chemyn.** L. Fr. A way; a journey. *Britt.* c. 61, 122. *Cheminaunt*; journeying, travelling. *Id.* c. 122.

**CHESCUN.** L. Fr. Every one; every. *En chescun article et chescun point*; in every article and every point. *Artic. sup. Chart.* c. 1.

**CHET.** L. Fr. It falls or abates. See *Cheir.*

**CHEVAGE, Chivage, Chiefage.** L. Fr. and Eng. [L. Lat. *chevadium, chivadium*, from Fr. *chef*, a head.] In old English law. A tribute or sum of money formerly paid by villeins or bondmen, (*servi*) to their lords, in acknowledgment of their bondage. *Bract.* fol. 6 b. *Co. Litt.* 140 a. *Bracton* speaks of it as paid by those villeins who were permitted to go about the country (*vagantes per patriam*;) and engage in employments, such as traders and hired workmen, (*sicut mercatores vel mercenarii*;) the payment being made in token of subjection to their lord, and of his property in them; (*in signum subjectionis, et domini de capite suo.*) *Bract. ub. sup.*

*Chevage* was so called, according to *Spelman*, because paid to the lord as to their chief or head, (*domino tanquam capiti.*) *Spelman*, voc. *Chevadium*. According to others, because it was paid for their several heads, (*de capite suo*;) being a kind of head or poll money. *Co. Litt.* 140 a. *Blount.* The Jews, while they were admitted to live in England, paid *chevadium* or poll money to the king; as appears by Pat. 8 Edw. I. par. 1. M. 15. And it was three pence for every head, paid yearly at Easter, in token of their servitude. *Stat. de Judaismo. Blount.* *Chevage* seems also to have been used for a sum of money yearly given to a man of power, for his countenance and protection as a chief or leader. *Termes de la ley. Cowell.*

**CHEVAGIUM, Chevadium, Chivadium.** L. Lat. *Chevage*, or *chivage.* *Bract.* fol. 6 b. *Spelman.* See *Chevage.*

**CHEVANCE.** L. Fr. Goods, money, riches, substance. *Kelham.*

A bargain. *A faire chevances*; to borrow, to make bargains for. *Kelham*.

CHEVANTIA, *Chevancia*. L. Lat. [L. Fr. *chevance*.] A loan or advance of money upon credit. *Cowell*.

CHEVERES. L. Fr. Goats. *Britt.* c. 71.

CHEVIR. L. Fr. To come to a head; to come to an agreement touching property. *Kelham*. *Chevir de denier*; to take up money on loan. *Id*.

CHEVISANCE. Fr. [from *chevir*, to come to the head, (*chef*), or end of a business.] In old English law. A bargaining, or perfecting of a bargain—(drawing the matter to a head.) *Termes de la ley*. A making of contracts. *Dufresne* II. 569. *Stat. 37 Hen. VIII. c. 9. Stat. 13 Eliz. c. 5. 7. 8. cited 2 Bl. Com. 474. Cowell*.

A bargain or contract. *Cowell. Blount*. An unlawful or usurious bargain or contract. *Stat. 12 Car. II. c. 13. Ibid*. Sometimes erroneously written *cherisance. Whislaw*.

CHEVITILÆ, *Cheviscæ*. L. Lat. Pieces of ground, or heads at the end of ploughed lands. *2 Mon. Angl. 116. Cowell. Blount*. See *Caputia*.

CHI APRES. L. Fr. Hereinafter. *Kelham*.

CHIEF. [Fr. *chef*; L. Lat. *caput*.] A head or lord. In feudal law, those tenants who held immediately under the king, in right of his crown and dignity, were called his tenants *in capite*, or in chief—that is, head tenants, holding from the head (*de capite*) of the government. *2 Bl. Com. 60. Gilb. Com. Pleas, Intro. 17*.

In practice. A principal thing, as distinguished from that which is incidental or subordinate. To declare *in chief*, in the old books, signified to declare for the principal cause of action. *1 Tidd's Pr. 419*.

A beginning; that which comes first in order of proceedings. Examination *in chief* is the first examination of a witness on a trial, by the counsel of the party on whose behalf he is called, as distinguished from his cross-examination. *3 Carr. & P. 113*.

CHIEF BARON. [L. Lat. *capitalis baro*.] The presiding judge of the English Court of Exchequer; answering to the chief justice of other courts. *3 Bl. Com. 44. 3 Steph. Com. 401. See Baron*.

CHIEF JUSTICE. [L. Lat. *capitalis justiciarius*.] An appellation given to the presiding or principal judge of a court. See *Justice*.

CHIEF JUSTICIAR, JUSTICIER, or JUSTICIARY. [L. Lat. *capitalis justiciarius, justiciarius, justicia*.] In old English law. A high judicial officer and special magistrate, who presided over the *aula regis* of the Norman kings, and who was also the principal minister of state, the second man in the kingdom, and by virtue of his office guardian of the realm in the king's absence. *3 Bl. Com. 38. Gilb. C. P. Intro. 18—20. Spelman, voc. Justitia. See Justicier, Justitiarius*.

CHIEF LORD. [L. Lat. *capitalis dominus*.] In English law. The immediate lord of the fee, to whom the obligation of the tenant is direct and personal. *Stat. Quia Emptores, (18 Edw. I.) c. 1. 2 Inst. 501. Litt. sect. 479, 538. Burton's Real Prop. 317*. The Fr. *chefe seignieur* is used to signify the lord paramount, as distinguished from the mesne lord. *Chiefe seignieur, mean et tenaunt. Reg. Orig. 15 b, regula*.

CHIEF PLEDGE. [L. Lat. *capitalis plegius*.] In old English law. A head-borrow, or borsholder. *Spelman, voc. Borsholder, Friborga. Yelverton, 186*.

CHIEF RENTS. [L. Lat. *reditus capitales*.] In English law. Rents of the freeholders of a manor. *2 Bl. Com. 42*. Called also *quit rents (quieti reditus)*, because thereby the tenant goes *quit* and free of all other services. *Id. ibid*.

CHIER, *Chire*. L. Fr. Dear. *Kelham*.

CHILDREN. In deeds, this word signifies the immediate descendants of a person, in the ordinary sense of the word, as contra-distinguished from *issue*; unless there be some accompanying expressions, evidencing that the word is used in an enlarged sense. *Lewis on Perpetuity, 196. 1 Vesey, 196. Ambl. 555. S. C.* In testamentary instruments, however, unless the manifest intent requires a different construction, it is extended to all the descendants, whether mediate or immediate, of the ancestor, being in such cases synonymous with *issue*. *Lewis on Perp. 195, 196. 2 Crabb's Real Prop. 38, 39, §§ 988, 989. 4 Kent's Com. 345, 346, note. Id. 419. 1 Sumner's Rep. 360. 10 Metcalf, 502. See Issue*.

**CHILDWIT.** Sax. [from *child*, and *wite*, a fine.] In Saxon law. The right which a lord had of taking a *fine* of his bondwoman gotten with *child* without his license. *Termes de la ley*. Cowell. Or, according to some, the fine itself. *Holt-house*.

**CHILTERN HUNDREDS.** In English politics. A tract of country extending through part of Buckingham and Oxfordshires, comprising the hundreds of Stoke, Desborough and Bonenham; the stewardship of which is a nominal office in the gift of the crown. As members of parliament, strictly speaking, cannot resign their seats, and as, on the other hand, the acceptance of an office under the crown has the effect of vacating a member's seat, the mode of abandoning a seat is by taking the stewardship of the Chiltern Hundreds. 2 *Steph. Com.* 403. *Holthouse*. *Wharton*. *Brande*.

**CHIMIN,** *Chemyn*. L. Fr. [L. Lat. *chiminus*.] A way, or right of way; the same with the Lat. *via*, or *aditus*. *Co. Litt.* 56 a. *Spelman*, voc. *Chiminus*. *Termes de la ley*. *Com. Dig.* *Chimin*. *Le haut chimin*; the highway. See *Via*, *Way*, *Aditus*.

**CHIMINAGE.** L. Fr. [L. Lat. *chiminagium*, from *chimin*, q. v.] In old English law. A toll due by custom for having a way through a forest. *Co. Litt.* 56 a. A toll exacted by the foresters from carriages and horses passing through forests. *Spelman*, voc. *Chiminus*. *Charta de Foresta*, c. 14. Called by the feudists *pedagium*. *Co. Litt. ub. sup.* *Blount*.

**CHIMINAGIUM.** L. Lat. *Chiminage*. *Charta de Foresta*, c. 14. See *Chiminage*.

**CHIMINUS.** L. Lat. [L. Fr. *chimin*.] In old English law. A way; a road or street. *Spelman*. *Quatuor chimini*, *Watling streete*, *Fosse*, *Hikenild streete*, & *Erming streete*, &c. *LL. Edw. Conf.* c. 12, *apud Spelman*.—*Chiminum*. *Reg. Orig.* 155. In *chimino regis*; on the king's highway. *Bract. fol.* 144.

**CHIMNEY MONEY,** or *Hearth Money*. A tax upon chimneys or hearths; an ancient tax or duty upon houses in England, now repealed. Cowell. See *Fuage*, *Hearth-money*.

**CHIPPINGAVEL,** *Cheapingavel*. (Probably Sax. *ceapingavel*; from *ceap*, ware, and *gavel*, duty.) In old English law. A

toll or duty for buying and selling; an ancient tax imposed upon wares brought to a place to be sold. *Blount*. See *Bagavel*, *ibid*.

**CHIR.** L. Fr. A contraction of *chivalier*, knight.

**CHIRGEMOT,** *Chirchgemot*. [Sax. *circgemot*; from *circ*, *ciric* or *cyric*, a church, and *gemot*, an assembly.] In Saxon law. An ecclesiastical assembly or court; (*forum ecclesiasticum*.) *Spelman*. *LL. Hen. I. c.* 8, cited *ibid*. A synod or meeting in a church or vestry. 4 *Inst.* 321.

**CHIROGRAPH.** [L. Lat. *chirographum*, q. v.] A deed or charter. See *Charter*, *Charta*.

An indenture executed in parts. 2 *Bl. Com.* 296. *Hargr. Co. Litt. note* 234, lib. 2.

A fine of lands. *Blount*. See *Chirographum*.

A word used in the execution of indentures, and in levying fines. 2 *Bl. Com.* 296. *Hargr. Co. Litt. ub. sup.* See *Chirographum*.

**CHIROGRAPHUM,** *Ciographum*, *Cy-rographum*. Lat. [from Gr. *χειρόγραφον*, which from *χείρ*, a hand, and *γράφω*, to write; a handwriting, that which is written with a person's own hand.] In Saxon law. A deed, charter, or instrument of conveyance in writing. *Spelman*, voc. *Charta*. *Ingulphus*, *ibid*. See *Charter*, *Charta*, and *infra*.

In English law. A deed or indenture executed in two parts, and divided by a cut through certain words written in the middle; called also *scriptum chirographatum*, or *charta cyrographata*. *Bract. fol.* 34. *Co. Litt.* 143 b. *Hargr. Co. Litt. note* 234, lib. 2. 2 *Bl. Com.* 296. 1 *Reeves' Hist. Eng. Law*, 89. Cowell. *Blount*. See *Indenture*.

The word itself, through which deeds were cut or indented, and divided. 2 *Bl. Com.* 296.

A fine of lands. *Blount*.

In the civil and canon law. An instrument executed between two parties, as debtor and creditor, and called *chirographus*, because written only with the hand of one party, (sc. the debtor,) and left in the hands of the creditor. *Lindwode*, tit. *de Offic. Archidiacon.* c. 1, *apud Spelman*, voc. *Indentura*. Sometimes, however, used in the same sense as *syngrapha*, (q. v.) *Id. ibid*.

In the Saxon times, any public instru-

ment of gift or conveyance, attested by the subscription and crosses of the witnesses present, was called *chirographum*, a word taken from the Roman writers, who used it to signify a bond or obligation which a person wrote or subscribed with his own hand. *Juvenal*, xiii. 137. *Suet. Aug.* 87. The Normans, besides changing the mode of executing these instruments, altered their name also to *charta*. *Spelman*, voc. *Charta*. *Ingulphus*, cited *ibid.* and in *Cowell*. When the practice was afterwards introduced, of executing charters or deeds in parts, i. e. in a part and counterpart, (or as *Cowell* calls it, in *script* and *rescript*,) it was done as follows. The whole of the instrument was written twice on the same sheet or skin of paper or parchment, leaving a space in the middle, where certain capital letters were written. What these letters at first were, and in what form, does not precisely appear. *Cowell* says they were the capital letters of the alphabet. The idea of employing a single word for this purpose was probably borrowed from the civilians and canonists, who had the same fashion of executing their instruments, and who made use of the very expressive word *syngrapha* or *syngraphus*. *Lindewod.* tit. de offic. archidiacon. c. 1, cited in *Spelman*, voc. *Indentura*. *Cowell*, voc. *Indenture*. See *Indenture*, *Syngraphus*. Instead of *syngraphus*, however, the word CHIROGRAPHUM was adopted, probably, from its ancient use in Saxon conveyances, (*supra*), and from its convenient length, as well as appropriate meaning. After the instrument had been executed, with this word so written in capital letters between the parts, the parchment was divided by cutting it across, through the middle of these letters, so that when the two parts were separated, one would exhibit one half of the capital letters and one the other, and when joined, the words would appear entire. See *Indenture*. This cut or division was at first made in a straight line. Afterwards, the fashion came into use of cutting through the word in acute angles, (the cuts passing between the letters alternately,) like the teeth of a saw, (*instar dentium*), which gave these deeds the name of *indentures*. 1 *Reeves' Hist. Eng. Law*, 89. This was afterwards changed to a waving line, which seems to have been continued as long as the word itself, (now Englished and written *chirograph*), or the practice of cutting was retained. From this peculiar formality the instruments themselves so executed were called *chirographs*. 2 *Bl. Com.* 295. 1 *Reeves' Hist. ub. sup.* *Hargr. Co. Litt.* note 234, lib. 2.

The practice of executing deeds, (or charters, as they were termed) in this form, seems to have originally been confined to what were called *chartæ communes*, (common or mutual charters,) which are spoken of by *Bracton* under the name of *charta cyrographata*, (*quæ scinditur per medium, et una pars remanet parti uni, et altera alteri.*) *Bract.* fol. 34. *Glanv.* lib. 8, c. 1. The peculiar fashion of dividing or indenting through the word *chirograph* was continued in fines after it had been discontinued in ordinary deeds; and hence the foot or conclusion of the fine, where the word was used, came to be itself called the *chirograph*. 2 *Bl. Com.* 351; and *Appendix*, No. IV. § 5. *Blount*. See *Indenture*.

CHIROGRAPHER OF FINES. [L. Lat. *chirographus* or *chirographarius finium et concordiarum*.] In old English law. An officer of the court of common pleas, who engrossed the fines acknowledged in that court after they were examined, and fully passed by other officers; and who wrote and delivered the indentures of them to the parties. 2 *Bl. Com.* 351. 2 *Inst.* 468. *Cowell*. *Blount*. See *Fine*.

CHIROTHECA. L. Lat. A glove. *Bract.* fol. 35 b. *Par chirothecarum*; a pair of gloves. *Towns. Pl.* 258.

CHIVAGE. See *Chevage*.

CHIVALRY. [L. Fr. *service de chevalier*; L. Lat. *servitium militare*.] In feudal law. Knight-service. Tenure in chivalry was the same as tenure by knight-service. 2 *Bl. Com.* 61, 62.

CHIVAUCHER, *Chivacher*, *Chivalchier*. L. Fr. [from *chival*, a horse.] To ride; to ride over, or about. *Kelham*. To perambulate. *Id.*

CHOA, *Chou*, *Chu*. L. Fr. Corrupted forms of *ceo*, (q. v.) *Kelham*.

CHOP-CHURCH. [L. Lat. *ecclesiarum permutatio*.] In English ecclesiastical law. A changing or exchanging of churches or benefices. Mentioned in *Yearbook*, 9 *Hen.* VI. 65. *Cowell*. *Blount*.

A nickname given to those that used to change benefices; sometimes called church-choppers. *Id. ibid.* To chop and change is still a common expression.

CHOSE. Fr. A thing. Generally used in combination with other words; as *chose in action*, *chose in possession*, &c. See

*infra*. Sometimes written in Law French, *choce*. *Kelham*.

**CHOSE IN ACTION.** A thing in action. A thing of which one has not the possession or actual enjoyment, but only a right to it, or a right to demand it by action at law.\* 2 *Bl. Com.* 396, 397. *Termes de la ley*.—A personal right, not reduced to possession, but recoverable by suit at law. 2 *Kent's Com.* 351. Thus, money due on a bond, note, or other contract, is a chose in action, for a property in the money vests whenever it becomes payable, but there is no possession till recovery by course of law, unless payment be first voluntarily made. 2 *Bl. Com.* 396, 397. 2 *Steph. Com.* 74. 2 *Kent's Com.* 351. So a right to recover damages for breach of covenant, or for a tort, is a chose in action. *Id. ibid.* 1 *Chitty's Gen. Pract.* 99, and note.

A chose in action is a thing rather in *potentia* than in *esse*, though the owner may have as absolute a property in, and be as well entitled to such things in action, as to things in possession. 2 *Bl. Com.* 397, 398. It has been called with propriety, a chose in suspense. *Id.* 397. *Bro. Abr.* Chose in action. *Cowell*.

**CHOSE IN POSSESSION.** A thing in possession, as distinguished from a thing in action. See *Chose in action*. Taxes and customs, if paid, are a chose in possession; if unpaid, a chose in action. 2 *Bl. Com.* 408.

**CHOSE LOCAL.** A local thing; a thing annexed to a place, as a mill. *Kitchin*. fol. 18. *Cowell*. *Blount*. Answering probably to the *res immobilis* of the civil law.

**CHOSE TRANSITORY.** A thing which is moveable, and may be taken away or carried from place to place. *Cowell*. *Blount*.

**CHRE.** A contraction of *chartre*.

**CHRISTIANITATIS CURIA.** L. Lat. The court of Christianity; the court Christian, or ecclesiastical judicature, as opposed to the civil court, or lay tribunal. *Cowell*. See *Court Christian*.

**CHRONICON PRETIOSUM.** The title of a work written by Bishop Fleetwood, at the beginning of the 18th century, showing the value of money at different periods in English history. 1 *Bl. Com.* 173.

**CHUN.** A contraction of *chescun*.

**CHURCH.** [Sax. *cyric*, *ciric*, *circ*; Lat. *ecclesia*; Fr. *eglise*.] An edifice appropriated to Christian worship and the performance of religious services.\* A house consecrated to the worship of God among Christians. *Webster*. In English ecclesiastical law, a church is otherwise called a *benefice*, and includes the glebe, parsonage and tithes. 1 *Crabb's Real Prop.* 77, § 90. To entitle a place of worship to be adjudged a church in law, it must have administration of the sacraments and sepulture annexed to it. 2 *Inst.* 363. 1 *Wooddes. Lect.* 188. See *Ecclesia*.

A body or community of Christians, united under one form of government by the profession of the same faith, and the observance of the same ritual and ceremonies.\* *Webster*.

In English ecclesiastical law. An institution established by the law of the land in reference to religion. 3 *Steph. Com.* 54. For the American law under this head, see *U. S. Digest*, Church. *U. S. Ann. Dig.* 1847, 1848, h. t.

**CHURCH BUILDING ACTS.** Statutes passed in England in, and since the year 1818, with the object of extending the accommodation afforded by the national church, so as to make it more commensurate with the wants of the people. 3 *Steph. Com.* 152—164.

**CHURCHESSET, Churchset, Cirset, Kirkset, Chirset.** In old English law. A certain portion or measure of wheat, anciently paid to the church on St. Martin's day; and which, according to *Fleta*, was paid as well in the time of the Britons as of the English. *Fleta*, lib. 1, c. 47. An annual tribute paid to the church in grain or other product; (*census vel tributum ecclesiæ; frumenti tributum*.) *Spelman*, voc. *Cirset*. *Lindenbrog*, and *Domesday*, cited *ibid*. Sometimes written *chirchsed*, and translated *churchseed*, (*semen ecclesiæ*.) *Fleta*, *uñ. sup.* *Co. Litt.* 88 b. But the proper spelling, according to *Spelman*, is *ciricscet*, or *ciricsceat*, (q. v.)

**CHURCH RATE.** A rate imposed upon the parishioners of a parish for the repairs of the church. Sometimes called a *church lay*. *Holthouse*. 1 *Wooddes. Lect.* 160.

**CHURCH REEVE.** A church warden; an overseer of a church, (*præpositus ecclesiæ*.) Now obsolete. *Cowell*. See *Reeve*.

**CHURCH WARDENS.** [L. Lat. *ecclesiæ guardiani*.] Guardians, overseers or keepers of the church. Parochial officers annually appointed by the parish, whose peculiar province it is to *take care of the church*, that is, to see to the repairs of the church, and to have the care of the goods belonging to it. 1 *Bl. Com.* 394, 395. 1 *Wooddes. Lect.* 160. 3 *Steph. Com.* 90, 91. *Cowell. Termes de la ley.* They are the representatives of the body of the parish, and are taken, in favor of the church, to be, for some purposes, a kind of corporation at the common law, that is, they are enabled by that name to have a property in goods and chattels, and to bring actions for them, for the use and profit of the parish. 1 *Bl. Com.* 394. 3 *Steph. Com.* 90. 1 *Wooddes. Lect.* 161. Story, J., 9 *Cranch R.* 43.

**CHURL.** [Sax. *ceorl*; L. Lat. *ceorlus, cirilus, cirlicus*.] In Saxon law. A free-man of inferior rank, chiefly employed in husbandry. 1 *Reeves' Hist. Eng. Law*, 5. — A tenant at will of free condition, who held land from a thane, on condition of rents and services. *Cowell.* See *Ceorl*.

**CI, Cy, Si.** L. Fr. So. *Pur ceo que fine est ci hault barre, et de ci graund force, et de ci puissant nature*; because a fine is so high a bar, and of so great force, and of so powerful a nature. *Stat. Modus Lev. Fin.* 2 *Inst.* 510.

**Ci Dieu vous eyde (aide)**; so help you God. *Reg. Orig.* 302 b, 303. Britton uses *si*, (q. v.) See *Oath*.

**CIBATUS, Cibata.** Lat. Victualled. *Cibat' velat' et parat'*; victualled, tackled and apparelled. *Towns. Pl.* 227.

**CIER, Sier.** L. Fr. To mow. *Kelham.*

**CIEUS.** L. Fr. Those, such. *Id.*

**CILI, Cil.** L. Fr. He. *Id.* A corruption of *celui*.

**CINCAUNT, Sinkaunt.** L. Fr. Fifty. *Kelham.*

**CINQUE, Cink, Sink, Sinke.** L. Fr. Five. *Kelham.*

**CINQUE PORTS.** [L. Lat. *quinque, portus*; five ports.] Five (now seven,) ports or havens on the S. E. coast of England, towards France, formerly esteemed the most important in the kingdom. They are Dover, Sandwich, Romney, Hastings

and Hythe; (sometimes called in the old books, Doure, Sandwyz, Romual, Hastings and Heya; *Bract. fol.* 118;) to which Winchelsea and Rye have been since added. They have similar franchises, in some respects, with the counties palatine, and particularly an exclusive jurisdiction (before the mayor and jurats, [corresponding to aldermen,] of the ports,) in which the king's ordinary writ does not run. 3 *Bl. Com.* 79. They have a governor called the Lord Warden of the Cinque Ports, who is always the constable of Dover castle. *Id. ibid. P. Cyclopædia.* See *Warden of the Cinque Ports*. The members returned from these ports to parliament are termed *barons of the cinque ports*. *Brande.*

The superior importance of these haven towns dates from a remote period, and originally grew out of their local situation, it being considered necessary from their proximity to France that they should be guarded with peculiar vigilance against invasion. *Cowell.* In the time of the Saxons there were but three, which are mentioned in Domesday book, namely, Dover, Sandwich and Romney; to these the Conqueror is said to have added Hastings and Hythe, making the number which has ever since given them their name. *Crabb's Hist. Eng. Law*, 141. Their franchises are expressly mentioned by Bracton, and, with some exceptions, are still preserved; although the towns themselves have long since lost their ancient importance. *Bract. fol.* 118. *Municipal Corporation Act, Stat.* 5 & 6 *Will. IV. c.* 76. cl. 134, 135.

**CIPPI.** L. Lat. [L. Fr. *cipps, ceps*.] In old English law. The stocks; an instrument for punishing offenders. *Quare vi et armis clausum et cippos ipsius abbatis apud Berton', in quibus cippis, Henricus le Smyth natus suus pro quibusdam inobedientiis suis per ipsum abbatem positus fuit, fregit, &c.* Wherefore, with force and arms he broke the close and stocks of the said abbot at Berton, in which stocks Henry the Smyth his villein had been put by the said abbot for certain disobediences, &c. *Reg. Orig.* 96 b. Bracton uses the singular, *in cippo*. *Bract. fol.* 145 b. See *Stocks*.

**CIPPS, Cips, Ceps, Seps.** L. Fr. Stocks. *Kelham.*

**CIRCA.** Lat. About, concerning, respecting, in relation to. *Bract. fol.* 188 b.

**CIRCADA.** L. Lat. In old English law. A tribute paid to the bishop or arch-

deacon for visiting the churches. *Dufresne. Whishaw.*

**CIRCBOTA.** L. Lat. [Sax. *circbote*, from *circ*, a church; and *bote*, restoration.] In Saxon law. The repairing of a church. (*ecclesiæ restauratio.*) *Spelman, voc. Bota.*

**CIRCSET, Kirkset, Cyricset.** [properly *curscet*, or *circscet*, Sax. from *cyric*, a church, and *scet*, a portion.] In old English law. A tribute paid to the church. *Spelman. See Churchesset.*

**CIRCUIT.** [Lat. *circuitus*, from *circueo*, or *circum eo*, to go around.] A civil division of a country, state or kingdom, for the more convenient administration of justice; courts being held in the different circuits at stated periods, by the judges of the superior courts, who *go around* for that purpose. In England, there are eight of these judicial circuits, each embracing several counties, into which the judges go twice a year, viz. in the vacations after Hilary and Trinity terms. 3 *Bl. Com.* 57, 58. 3 *Steph. Com.* 421, 423. *Warren's Law. Studies*, 318. The United States are divided into nine circuits. 1 *Kent's Com.* 301. A similar division prevails in most of the individual states. See *Nisi Prius, Courts of assise and Nisi Prius, Circuit courts.*

Circuits, as the term is used in England, may be otherwise defined to be, *the periodical progresses of the judges* of the superior courts of common law, through the several counties of England and Wales, for the purpose of administering civil and criminal justice. *P. Cyclopædia.* These modern circuits or progresses have taken the place of the *eyres* or *itineraria* of the ancient system. See *Assises, Eyre, Iter.*

**CIRCUIT COURTS.** In American law. Courts held in the several federal and state circuits. The United States circuit courts are held by one of the justices of the supreme court appointed for the circuit, (and bearing the name, in that capacity, of *circuit judge*,) together with the district judge of the district in which they are held. Their business is not only the supervision of trials of issues in fact, but the hearing of causes as a court in banc; and they have equity as well as common law jurisdiction, together with appellate jurisdiction from the decrees and judgments of the district courts. 1 *Kent's Com.* 301—303.

The state circuit courts are usually held solely for the trial of issues of fact, like the English courts of *Assise and Nisi Prius.*

**CIRCUIT PAPER.** In English practice. A paper containing a statement of the time and place at which the several assizes will be held, and other statistical information connected with the assizes. *Holt-house.*

**CIRCUITY OF ACTION.** [L. Lat. *circuitus actionis.*] A longer course of proceeding to recover a thing sued for than is needful; called in some of the old books, *circuit* of action. *Termes de la ley. Cowell. Wingate's Max.* 680, max. 179. A circuitous or round-about course of legal procedure, instead of a direct and shorter one. As where a defendant, instead of availing himself of a counter claim against the plaintiff, [e. g. damages for breach of warranty] in the *same* action, allows him to recover the full amount sued for, and then commences a *cross* action to recover his own demand. *Termes de la ley. 2 B. & Ad.* 462.

**Circuitus est evitandus.** Circuity is to be avoided. 5 *Co.* 31. *Wingate's Max. ubi supra.*

**CIRCUMSPECTE AGATIS.** L. Lat. (Act *circumspectly.*) The title of a statute passed 13 Edw. I., and so called from the initial words of it, the object of which was to ascertain the boundaries of ecclesiastical jurisdiction in some particulars, or, in other words, to regulate the jurisdiction of the ecclesiastical and temporal courts. 2 *Reeves' Hist. Eng. Law*, 215, 216.

This statute is, in fact, in the form of a *writ* from the king to his justices, concerning the bishop of Norwich and his clergy, beginning: "*Rex talibus iudicibus salutem; Circumspecte agatis, &c.*," without any mention of the concurrence of parliament. 2 *Inst.* 487. *Barrington on the statutes*, 123, cited 3 *Bl. Com.* 88. It has, however, always been considered as a statute, and its authority as such is not questioned. 2 *Reeves' Hist. Eng. Law*, 215, 216. 2 *Inst. ub. sup.* 12 *Ad. & Ell.* 315. There is some doubt as to its date.

**CIRCUMSTANTIA.** L. Lat. A circumstance. *In omnibus circumstantiis.* *Bract.* fol. 138. *Circumstantias.* *Id.* 153.

**CIRCUMSTANTIAL EVIDENCE.** Evidence derived from *circumstances*, as distinguished from *direct* and positive proof.\* It is also called [*presumptive* evidence, and the doctrine founded on it] the *doctrine of presumptions*, because where the fact itself cannot be proved, it may be *presumed* from the proof of such circumstances as either necessarily, or usually, attend such facts.

3 *Bl. Com.* 371. 3 *Steph. Com.* 614, 615, and note. See *Presumptive Evidence*.

The term *presumptive* is frequently used as synonymous with *circumstantial* evidence, but it is not so used with strict accuracy. *Wills on Circumst. Evid.* 25. *Greenl. on Evid.* § 13. According to Mr. Wills, circumstantial and presumptive evidence differ as genus and species. *Wills on Evid. ub. sup.* See *Presumptive Evidence*. The great peculiarity of circumstantial evidence is its *indirect* character, it being made to bear upon the principal fact in question, (the *factum probandum*.) though other and minor or collateral facts; a fact of this last kind being distinguished as *factum probans*. See *Factum probandum*. Mr. Wills, indeed, considers circumstantial evidence to be of a nature identically the same with direct evidence, and what he observes in confirmation of this position is undoubtedly true, that *as to the minor facts* themselves, the evidence by which *they* are to be established must be direct in its nature; but it is certainly not the less true that *as to the principal fact, this same evidence* is wholly *indirect*. The following distinctions made by Mr. Best, in his treatise on *Presumptions of law and fact*, may serve to illustrate more fully the nature of circumstantial evidence. When the existence of any fact is attested by witnesses, as having come under the cognizance of their senses, or is stated in documents, the genuineness and veracity of which there seems no reason to question, the evidence of that fact is said to be *direct* or *positive*. When, on the contrary, the existence of the principal fact is *only inferred* from one or more circumstances which have been established directly, the evidence [of such principal fact] is said to be *circumstantial*. And when the existence of the principal fact does not follow from the evidentiary facts as a necessary consequence of the law of nature, but is deduced from them by a process of probable reasoning, the evidence and proof are said to be *presumptive*. *Best on Presumptions*, 246. *Id.* 12. See *Greenleaf on Evidence*, § 13.

CIRCUMSTANTIBUS *Tales de*. See *Tales de circumstantibus*.

CIRLISCUS. L. Lat. A ceorl, or churl. *Spelman*. See *Ceorl*.

CIROGRAPHUM. See *Chirographum*.

CISTA. L. Lat. A chest or box, for containing charters, deeds or other thing.

*Reg. Orig.* 110 b. *Towns. Pl.* 192. 3 *Reeves' Hist. Eng. Law*, 73.

CITATIO. L. Lat. [from *citare*, to summon.] A citation or summons. See *Citation*.

CITATION. [Lat. *citatio*, q. v.] In practice. The process used in the ecclesiastical courts to call a party before them. 3 *Bl. Com.* 100. 3 *Steph. Com.* 720. It is the first step which is taken in an ecclesiastical cause; and is somewhat analogous to the writ of *capias* or summons at common law, or the subpoena in chancery. *Hollhouse*.

In American law. A process used in surrogates' courts requiring the attendance of parties on the probate of wills. *Dayton's Surrogate*, 18, 21, and Appendix No. 5.

A notice of a writ of error in the United States courts. *Conklin's Treatise*, 446.

CITIZEN. [Lat. *civis*.] In English law. The representative of a city in parliament, as a burgess is the representative of a borough. 1 *Bl. Com.* 174. 2 *Steph. Com.* 362, 363. But see *Burgess*.

Anciently, a freeman, or one who resided and kept a family in a city. 1 *Roll. Rep.* 138—149.

In American law. One who, under the constitution and laws of the United States, has a right to vote for public officers, and who is qualified to fill offices in the gift of the people. 3 *Story on Const.* 1687. — A free inhabitant, born within the United States, or naturalized under the law of Congress. 2 *Kent's Com.* 258, note. A citizen of the United States, residing permanently in any state, is a citizen of that state. Marshall, C. J., 1 *Brock. R.* 389, 391. And see *U. S. Digest*, and *Supplement*, Citizen. *U. S. Ann. Dig.* 1848, h. t.

CITY. [L. Fr. *cite*; L. Lat. *civitas*.] In English law. A town [or borough, *Co. Litt.* 109 a, b,] incorporated, [and usually of principal note or importance, 1 *Steph. Com.* 115,] which either is, or has been the see of a bishop. 1 *Bl. Com.* 114. *Termes de la ley*.

This definition has been made the subject of considerable criticism. The qualities of being *incorporated*, and of being or having been the *see of a bishop*, do not appear to have been invariably attached to cities in England; Westminster being a city, though not incorporated, and Thetford and several other places being but towns, though once the seats of bishops. *Co. Litt.* 109 b. *Hargr. note ibid.* *P. Cyclopaedia*. Dr. Wood-



deson remarks as to the latter feature, that whatever distinction in very early times prevailed between cities and towns in England, it certainly was not this: for in the great council of bishops and abbots, held in the year 1072, by command of Pope Alexander II., by the consent, and in the presence of the king, for settling the disputed superiority between the archbishops, it was decreed that bishops' sees should be transferred from towns to cities. This decree, he thinks, probably gave rise to the opinion that a bishop's see constituted a city, in the case also of the new foundations. 1 Wooddes. Lect. 180, citing *Ingulph. Hist.* 92, 93. Spelman alludes to the same decree and its consequences, in confining the title of *city* to the towns or boroughs in which such sees were located; (*civitatis titulus apud cathedralarios tantum burgos remanebat.*) Spelman, voc. *Burgus*. See *Borough, Burgus*. As to the modern distinction, in England, between a city and any other incorporated town or borough, it seems to be little more than nominal. Both cities and boroughs have the same form of local government, and both send special representatives to parliament, the only difference being that in the one case these representatives are or have been called *citizens*, and in the other *burgesses*. Spelman, voc. *Burgus*. *Municipal Corporation Act*, cited 3 Steph. Com. 193, *et seq.* In *Brande's Dictionary* it is said that a city differs in no respect but that of superior dignity from another borough. See *P. Cyclopædia*. And the distinction between citizen and burgess seems now to be disregarded. See 1 Man. & Gr. 1, note (a).

**CITY.** In American law. A corporate town; a town of the larger or more important class, incorporated, and governed by a mayor and council of aldermen.\* *Webster*.

**CIVIL.** [Lat. *civilis*, q. v.] Belonging or relating to, or affecting a person as a citizen (*civis*.) Relating to, or affecting the rights or duties of a citizen, particularly as between one citizen and another.\*

Relating to the community, or to the policy and government of the citizens and subjects of a state. *Webster*.

The meaning of this term will be best understood from its application, as under the following heads.

**CIVIL ACTION.** An action brought to recover some civil right, or to obtain redress for some wrong, not being a crime or misdemeanor. 3 Bl. Com. 2, 116. In this latter respect it is distinguished from a cri-

minal action or prosecution. See *Civil right, Civil injury*.

**CIVIL CORPORATIONS.** One of the two classes into which lay corporations are divided; the other division embracing what are termed *eleemosynary* corporations. 3 Steph. Com. 170. Municipal corporations, (as counties, cities, towns and villages,) incorporated manufacturing, banking, insurance and trading companies, and the like, are examples of civil corporations.\* *Id. ibid.* 2 Kent's Com. 275. See *Eleemosynary corporations*.

**CIVIL DEATH.** [Lat. *mors civilis*.] That change of a person's civil condition which is produced by certain acts or offences on his part; and which extinguishes his civil rights and capacities, just as natural death extinguishes his bodily existence. It anciently followed on a man's entering into religion, (i. e. going into a monastery,) or abjuring the realm; and is still in England the consequence of being attainted of treason or felony. *Bract.* fol. 301 b, 421 b. 1 Steph. Com. 192. 2 Bl. Com. 121. 4 *Id.* 380. In New York it follows on a person's being sentenced to imprisonment for life in a state prison. 2 Rev. St. [701,] 586, § 20. See *Civiliter mortuus*.

**CIVIL INJURY.** An infringement or privation of some civil right, and which is a subject for civil redress or compensation; as distinguished from a *crime*, which is a subject for punishment.\* 3 Steph. Com. 556. See *Civil right*.

Civil injuries are defined or described by Sir W. Blackstone as "*private wrongs*," being "an infringement or privation of the *private* or civil rights belonging to individuals, considered as individuals," and in this respect distinguishable from crimes or misdemeanors, which "are a breach and violation of *public* rights and duties, which affect the whole community, considered as a community." 3 Bl. Com. 2. This distinction between *private* and *public* hardly seems to express that which exists between civil injuries and crimes; as a wrong may obviously be of a public character, affecting (though indirectly,) a whole community, and yet at the same time, in its nature only a *civil* injury. The withholding of debts or duties from a public (municipal) corporation, a state, and the national government itself, is obviously of this description; the remedy being merely by a *civil* action, though a community is the complaining party.

The distinction between *private* and *pub-*

lic rights, in the definition of civil injuries, has been properly rejected by Mr. Stephen, who, in place of the definition of Blackstone, describes civil injuries as "the violation of *private or public* rights, when considered in reference to the injury sustained by the individual, and consequently as subjects for civil redress or compensation," and distinguishes them in this respect from crimes, which "are the violation of *public or private* rights, when considered in reference to their evil tendency as regards the community at large, and accordingly visited with punishment. 3 *Steph. Com.* 356, and note (d).

**CIVIL LAW.** [Lat. *Jus civile Romanum*.] The Roman law, as comprised in the Code, Pandects, Institutes and Novels of Justinian, and his successors, constituting together what is termed the *Corpus Juris Civilis*, as distinguished from the canon and common law. 1 *Ken's Com.* 538—543. See *Corpus Juris Civilis*.

The Roman law of an earlier period was introduced into Britain on its subjugation by Agricola towards the end of the first century, and is supposed to have prevailed there until the abandonment of the island by the Romans at the beginning of the fifth century: after which it was superseded by the laws of the Saxons and other invaders. See *Roman law*. The civil law, properly so called, was first introduced during the reign of Stephen, (about the middle of the twelfth century,) and is represented by Blackstone and other standard writers on the law of England, as a foreign and rival system, between which and the native *common law* a continual struggle was maintained until the reign of Edward I., when the common law obtained a complete and permanent victory; the civil law being thenceforward confined within certain limits, and regarded or tolerated as a merely auxiliary and subordinate system. 1 *Bl. Com.* 18—25. 4 *Id.* 421—425. 3 *Id.* 87. It is not surprising that the merits of the civil law, and its influence upon the law of England should have been differently viewed and represented by English civilians; but none appear to have gone the length of Mr. Spence, who, in his late treatise on *The Equitable Jurisdiction of the Court of Chancery*, has undertaken to prove the *common law* itself to be, in many of its most important and (as generally supposed) characteristic doctrines and proceedings, of decidedly Roman origin. See *Common law*.

**CIVIL LAW.** [Lat. *jus civile*.] That system of law which a community, state or

nation establishes for its own peculiar government; (*quod quisque populus sibi jus constituit*;) as distinguished from the *jus gentium*, or general law of nations. *Inst.*

1. 2. 1. Otherwise termed by Blackstone, *municipal law*. 1 *Bl. Com.* 44. See *Jus Civile, Jus gentium, Municipal law*.

That division of municipal law which is occupied with the exposition and enforcement of *civil rights*, as distinguished from *criminal law*. See *Criminal law*.

**CIVIL LIBERTY.** The liberty of a member of society, being a man's natural liberty, so far restrained by human laws, (and no farther,) as is necessary and expedient for the general advantage of the public. 1 *Bl. Com.* 125. 2 *Steph. Com.* 487. The power of doing whatever the laws permit. 1 *Bl. Com.* 6. *Inst.* 1. 3. 1.

The above definitions are founded in a great degree upon that of the civil law, which is quoted by Blackstone in one place as "*Facultas ejus quod cuique facere libet, nisi quid vi aut jure prohibetur*;" (the power of doing whatever one pleases, except what is prohibited by force or law); and in the other, as "*Facultas ejus quod cuique facere libet nisi quid jure prohibetur*;" (the power of doing whatever one pleases, except what is prohibited by law). The definition, as given by the Institutes of Justinian, is in the following words, "*Libertas est naturalis facultas ejus quod cuique facere libet, nisi quid vi aut jure prohibetur*. Liberty is the natural power of doing whatever one pleases, except what is prohibited by force or law. *Inst.* 1. 3. 1. This is adopted by Bracton, almost in terms, and copied from him by Lord Coke. *Bract.* fol. 46 b. *Co. Litt.* 116 b. See *Libertas*. The emendation of Blackstone, it will be seen, consists in the very proper omission of the objectionable words "*vi aut*;"—liberty, according to modern ideas, admitting of no restraint by *force*, as independent of law.

**CIVIL LIST.** In English politics. An annual sum granted by parliament, at the commencement of each reign, for the expense of the royal household and establishment, as distinguished from the general exigencies of the state, being a provision made for the crown out of the taxes in lieu of its proper patrimony, and in consideration of the assignment of that patrimony to the public use. 2 *Steph. Com.* 591. 1 *Bl. Com.* 332.

The term *civil list* was formerly applied in England to the list of all the expenses of the government, or of all the heads of

public expenditure, excepting those of the army, the navy, and the other military departments. *Id. ibid.* *Brande.* And this seems to be its present meaning as applied to the expenditures of the government of the United States.

**CIVIL RIGHT.** The right of a citizen; the right of an individual as a citizen; a right due from one citizen to another, the privation of which is a *civil injury* for which redress may be sought by a *civil action*.

**CIVILIS.** Lat. [from *civis*, a citizen.] Civil, as distinguished from criminal. *Civilis actio*; a civil action. *Bract.* fol. 101 b, 102. *Civilis causa*; a civil cause. *Id. ibid.*

Civil; belonging to a *civitas* or state. *Jus civile*; civil law, the particular law of a state, as distinguished from *jus gentium*, the common law of nations. *Inst.* 1. 2. 1, 2.

**CIVILISTA.** L. Lat. A civil lawyer, or civilian. *Dyer*, 267.

**CIVILITER.** Lat. Civilly; by a civil course of procedure. This term, with its opposite *criminaliter*, occur in the civil law, from which source they were introduced (most probably through Bracton) into the law of England. *Sciendum est de omni injuriâ, eum qui passus est, posse vel criminaliter agere vel civiliter*; it is to be known (or observed) concerning every injury, that he who has suffered it may sue either civilly or criminally. *Inst.* 4. 4. 10. *Cum actio fuerit mere criminalis, institui poterit ab initio criminaliter vel civiliter*; where the action was merely criminal, it may be prosecuted from the beginning criminally or civilly. *Bract.* fol. 102.

Civilly; as a citizen. See *Civiliter mortuus*.

**CIVILITER MORTUUS.** L. Lat. Civilly dead; dead as a citizen; dead in law. (L. Fr. *mort en ley*.) *Litt.* sect. 200. Deprived of all civil rights and capacities, such as those of taking, holding and transmitting property; the rights of suffrage, of suing, of giving testimony in courts, &c.\* See *Civil Death*. A monk was accounted *civiliter mortuus*; and when he entered into religion might, like other dying men, make his testament and executors. 1 *Bl. Com.* 132.

**CIVIS.** Lat. In the Roman law. A citizen; as distinguished from *incola*, (an inhabitant;) origin or birth constituting the

former, domicil the latter. *Code*, 10. 40. 7. *Phillimore's Law of Domicil*, 25, 26.

**CIVITAS.** Lat. [from *civis*, a citizen.] In the Roman law. Any body of people living under the same laws; a state. *Jus civitatis*; the law of a state; civil law. *Inst.* 1. 2. 1, 2.

Citizenship; one of the three *status*, conditions or qualifications of persons. 1 *Mackeld. Civ. Law*, 129, § 119.

**CIVITAS.** Lat. & L. Lat. A city, (Lat. *urbs*.) By *civitas* is properly meant the inhabitants, (*incolæ*;) *urbs* includes the buildings. But the one is commonly taken for the other. *Co. Litt.* 109 b.

**CLAIA, Cleia, Cleta, Clida.** L. Lat. In old English law. A hurdle. *Spelman. Reg. Orig.* 103 b. Fitzherbert translates it *clay*. *F. N. B.* 95 A.

**CLAIM.** [L. Lat. *clameus*, *clamea*, *clameum*, *clamor*; *vendicatio*.] A challenge [or demand] by any man of the property or ownership of a thing, [or of some interest in it,] which he has not in possession, but which is withholden from him unlawfully. *Termes de la ley.* *Cowell.* *Blount. Litt.* sect. 420. *Plowd.* 359 a; *Stowell v. Zouch*.

A demand of some matter as of right made by one person upon another, to do or to forbear to do some act or thing as a matter of duty. *Story, J.*, 16 *Peter's R.* 539, 615.

**CLAIM CONTINUAL.** See *Continual claim*.

**CLAMARE.** L. Lat. In old English law. To claim; to demand or challenge; to assert a right to a thing. *Spelman. Clamans*; claiming. *Reg. Orig.* 36.

To complain. *Glanv. lib.* 1, c. 5.

To cry out; to publish or declare aloud; to proclaim. *Facias clamari et sciri*; you shall cause to be proclaimed and known. *Bract.* fol. 109 b.

**CLAMEA, Clamia.** L. Lat. In old English law. A claim. *Reg. Orig.* 19 b. *De clamia admittenda. Id. ibid.*

*Clameum, clameus*; a claim. *Co. Litt.* 291 b. *Bract.* fol. 7, 435 b.

**CLAMOR.** L. Lat. In old English law. A claim or complaint; clamour. *In misericordia pro falso clamore suo*; in mercy for his false claim or clamour. A common clause in old judgment records. See *Misericordia*.

A cry, or outcry. *Levare hutesium et clamorem*; to raise the hue and cry. *Bract.* fol. 16 b, 115 b, 358. Called by Glanville *clamor popularis*; the cry of the country. *Glanv.* lib. 14, c. 3.

CLARE CONSTAT. L. Lat. (It clearly appears.) In Scotch law. The name of a precept for giving seisin of lands to an heir; so called from its initial words. *Erek.* *Inst.* b. 3, tit. 8, § 71.

CLARENDON, *Constitutions of*. Certain declaratory ordinances, in sixteen articles, brought forward by King Henry II. at a great council held at Clarendon, A. D. 1164; and confirmed, A. D. 1170, at a council held at Northampton. 1 *Reeves' Hist. Eng. Law*, 75—79. Their object was to define the limits between civil and ecclesiastical jurisdiction; to prevent the further encroachments of the clergy; and to abolish the abuses which had arisen from the gradual and increasing usurpations of the pope.\* 4 *Bl. Com.* 422. *P. Cyclopædia*. 1 *Reeves' Hist. ub. sup.* *Crabb's Hist. Eng. Law*, 110, 111.

CLAUDERE. L. Lat. In old English law. To enclose; to turn open fields into closes and enclosures. *Cowell.* See *Close*.

To close, finish or end. *Diem clausit extremum*; he closed his last day. See *Diem clausit extremum*.

CLAUSE. [L. Lat. *clausi, clausæ*.] In old English law. Close, as distinguished from patent. See *Clausum, Close, Patent*.

CLAUSE ROLLS, or CLOSE ROLLS. [L. Lat. *rotuli clausi*.] Rolls preserved in London, containing the records of writs close, *literæ clausæ*, &c. See *Close Rolls*.

CLAUSTURA. L. Lat. [from *claudere*, q. v.] In old English law. An enclosure, or that which fences it. *Blount.* 2 *Mon. Angl.* 403.

Brush-wood for hedges or fences. *Cowell.* *Kennett's Par. Ant.* 247.

CLAUSULA. L. Lat. [from *claudere*, to enclose.] A clause; a sentence or part of a sentence in a written instrument or law. So called, as *enclosing* or including certain words. *Per clausulam contentam in charta.* *Bract.* fol. 17 b, 22 b.

*Clausula quæ abrogationem excludit ab initio non valet.* A clause [in a law] which precludes its abrogation, is void from the beginning. *Bacon's Max.* 77. A clause of this kind is called by Lord Bacon *clau-*

*sula derogatoria*, or *clausula de non obstante.* *Id.* 74.

*Non impedit clausula derogatoria quæ minus ab eadem potestate res dissolvantur a quibus constituentur.* A restraining or precluding clause does not [is of no force to] prevent things [laws or acts] from being dissolved by the same power by which they are made. *Bacon's Max.* 74, *regula* 19.

*Clausula vel dispositio inutilis per presumptionem remotam, vel causam ex post facto non fulcitur.* A useless clause or disposition [one which expresses no more than the law by intendment would have supplied,] is not supported by a remote presumption [or foreign intendment of some purpose, in regard whereof it might be material] or by a cause arising afterwards, [which may induce an operation of those idle words.] *Bacon's Max.* 82, *regula* 21.

*Clausula inconsonata semper inducunt suspicionem.* Unusual clauses [in an instrument] always induce suspicion. 3 *Co.* 81.

CLAUSUM. L. Lat. [from *claudere*, q. v.] In old English law. Close. A term applied to writs. *Clausum vel apertum*; close or open. *Bract.* fol. 188, 372 b. See *Close*.

A close. 3 *Bl. Com.* 209. 1 *Salk.* 254. *Infra* *clausum*; within the close. *Bract.* fol. 97 b.

CLAUSUM FREGIT. L. Lat. (He broke the close.) In pleading and practice. Technical words formerly used in certain actions of trespass, and still retained in the phrase *quare clausum fregit*, (q. v.) See *Breach of close*.

CLAUSUM PASCHÆ. L. Lat. [L. Fr. *cluse de Pasche*.] In old English practice. The close of Easter; the octave, (*octas* or *utas*, the eighth day after the feast) of Easter. *Stat. Westm.* 1, pr. 2 *Inst.* 157. *Cowell.* *Blount.* So called because it closed the feast. *Blount.*

CLAUSURA. L. Lat. [from *claudere*, q. v.] In old English law. An enclosure. *Clausura heyæ*; the enclosure of a hedge. *Cowell.*

CLAVES INSULÆ. Lat. The keys of the island. A term applied, in the Isle of Man, to twelve persons to whom all doubtful and important cases were referred. *Cowell.* *Blount.*

CLAVIA. L. Lat. In old English law. A club or mace; (Lat. *clava*.) Tenure

*per serjeantiam clavia*, by the serjeanty of the club or mace. *Cowell*.

**CLAWA.** L. Lat. A close, or small enclosure. *Cowell*.

**CLEARANCE.** In maritime law. The name of a certificate given by the collector of the port from which a vessel is about to sail, to the master, describing the vessel, cargo, and port of destination; and stating that he has entered and *cleared* his vessel according to law. It is obtained on delivery to the collector of a manifest of the cargo, sworn or affirmed to by the master. The penalty in the United States for sailing without a clearance is five hundred dollars. *Act of Congress, March 2, 1799, § 93. Jacobsen's Sea Laws, 303.*

**CLEMENTINE CONSTITUTIONS.** A collection of the decretals and constitutions of Pope *Clement V.*; published A. D. 1308, (or 1313, according to some,) under the title of *Liber septimus decretalium*; being the *seventh* book, in order of time, of the collection of the decisions and rescripts of the popes on matters of ecclesiastical discipline, and also on matters concerning laymen, which then came within the cognizance of the ecclesiastical courts. *P. Cyclopædia.* These constitutions were authenticated by Pope John XXII. A. D. 1317, and form part of the *Corpus Juris Canonici*, or body of the canon law. 1 *Bl. Com.* 82. See *Canon Law*.

**CLER, Cleur, Clur.** L. Fr. A clerk. *Kelham.* *De clers de nostre court de la chauncellerie, et de lun bancke et de lauter, et de clers del eschequer*; of the clerks of our court of the chancery, and of the one bench and of the other, and of the clerks of the exchequer. *Britt. c. 21.*

**CLERGY.** [L. Lat. *clerus*.] In English law. That division of the people which comprehends all persons in holy orders, (*infra sacros ordines*), and in ecclesiastical offices, as distinguished from the *laity*. 1 *Bl. Com.* 376. 3 *Steph. Com.* 55. See *Orders*.

In old English law. That peculiar privilege (L. Lat. *clerimonia*), anciently enjoyed by the clergy, otherwise called benefit of clergy. See *Benefit of clergy*. To pray clergy was to claim this privilege, by praying to have a book, so that the prisoner could show that he could read as a clerk, which was the test established. *Termes de la ley.* 4 *Bl. Com.* 364, et seq. *Dyer*, 205. 1 *Salk.* 61.

**CLERGYABLE.** That which admits of clergy, or benefit of clergy. A clergyable felony was one of that class in which clergy was allowable. 4 *Bl. Com.* 371—373.

**CLERICAL ERROR.** [L. Lat. *vitium clerici*.] A mistake in writing or copying; the mistake of a clerk, or writer. 1 *Ld. Raym.* 183.

**CLERICAL TONSURE.** The having the head shaven, which was formerly peculiar to clerks, or persons in orders, and which the coifs worn by serjeants at law are supposed to have been introduced to conceal. 1 *Bl. Com.* 24, note (t). 4 *Id.* 367.

**CLERICAL PRIVILEGIUM.** L. Lat. In old English law. The clerical privilege; the privilege or benefit of clergy. See *Benefit of clergy*.

**CLERICI.** L. Lat. [plur. of *clericus*.] Clerks; clergymen. See *Clericus*.

**CLERICI DE CANCELLARIA.** L. Lat. Clerks of the chancery. *Stat. Westm.* 2, c. 24.

**CLERICI DE PRIMA FORMA, or DE PRIMO GRADU.** L. Lat. Clerks of the first form or rank. The chief clerks of chancery, who acted as the chancellor's assistants, (*collaterales et socii cancellarii*), in the framing of writs in *consimili casu*; and were afterwards termed masters in chancery. *Crabb's Hist. Eng. Law*, 547, 184. 2 *Reeves' Hist. Eng. Law*, 250, 251.

**CLERICI DE SECUNDA FORMA.** L. Lat. Clerks of the second form, or grade. Clerks of the second rank in chancery, called in the statute of Westminster 2, clerks of course, (*clerici de cursu*), and afterwards cursitors (*curstiores*), whose business was to make out the common writs or writs of course (*de cursu*). *Crabb's Hist. Eng. Law*, 547. See *Cursitor*.

**CLERICI PRÆNOTARII.** L. Lat. The six clerks in chancery. 2 *Reeves' Hist. Eng. Law*, 251. See *Six clerks*.

**CLERICO ADMITTENDO.** See *De clerico admittendo*.

**CLERICO CAPTO PER STATUTUM MERCATORUM, &c.** See *De clerico capto, &c.*

**CLERICO CONVICTO, COMMISSO GAOLÆ, &c.** See *De clerico convicto, &c.*

CLERICO INFRA SACROS ORDINES CONSTITUTO, &c. See *De clerico infra sacros, &c.*

CLERICUS. L. Lat. In old English law. A clergyman, a clerk, or priest; a person in holy orders. *Legit ut clericus*; he reads like a clerk. *Dyer*, 205. See *Clerk*. *Nullus clericus nisi causidicus*; there is no clerk that is not an advocate. *Will. Malsb. de Gest. Reg. lib. 4*, cited 1 *Bl. Com.* 17.

A secular priest, as distinguished from a religious or regular. *Kennett's Par. Ant.* 171. *Cowell*.

A clerk or person who used his pen in any courts or otherwise. See *Clerk*.

CLERICUS MERCATI. L. Lat. Clerk of the market. 2 *Inst.* 543.

CLERICUS PAROCHIALIS. L. Lat. A parish clerk. *Towns. Pl.* 213. Otherwise called *clericus sacerdotis*, the priest's clerk. *Cowell*.

CLERICUS ET CUSTOS ROTULORUM. L. Lat. Clerk and keeper of the rolls; otherwise called *clericus parvæ bagæ, et custos rotulorum, et domus conversorum*; clerk of the petty bag, and keeper of the rolls, and of the house of the converts. Ancient titles of the *Master of the Rolls*. 3 *Reeve's Hist. Eng. Law*, 154.

CLERIMONIA. L. Lat. [from *clerus*, q. v.] Clergy, or privilege of clergy. 2 *Inst.* 635.

CLERK. [L. Lat. *clericus*; L. Fr. *cler.*] In English ecclesiastical law. A priest or clergyman; a person in orders. When a person has been ordained a priest, he is, in the language of the law, a *clerk in orders*. 1 *Bl. Com.* 388. A person presented to a benefice or living is technically called a *clerk*. *Id. ibid. et seq.*

In general law and practice. An officer of a court, who keeps its minutes or records its proceedings, and has the custody of its records and seal. Sometimes called a *prothonotary*, (q. v.) See *Clerkship*.

This latter meaning of the term *clerk*, which is the prevalent one in modern law, though itself of considerable antiquity, seems to have entirely grown out of the primitive signification of *ecclesiastic*. *Selden's Diss. ad Fletam*, ch. 9, sect. 3. Among other branches of learning formerly exclusively confined to the clergy were the (now ordinary) accomplishments

of reading and writing. The ability to read, as we have seen, was at first so entirely peculiar to that body that for a convict to be able to read (though never in holy orders,) was, of itself, sufficient to entitle him to the privilege of clergy. 4 *Bl. Com.* 367. The mere certificate of the ordinary or his deputy, *legit ut clericus*, (he reads as a clerk, like one of the clergy,) procured his immediate discharge from the temporal court. See *Benefit of clergy, Clericus*. The still rarer accomplishment of *writing*, was so far engrossed by the clergy as, in the course of time, to obtain for any person who *habitually used his pen*, in any employment, the appellation of "a clerk," (*clericus*;) and this circumstance, in addition to the fact that the judges of courts were formerly usually created out of the sacred order, and that all the inferior offices were supplied by the lower clergy, sufficiently accounts for the application of the term *clerk* (once peculiar to the clergy) to those officers of courts whose principal function was to use their pen in recording the proceedings. *Termes de la ley*. 1 *Bl. Com.* 17. *Selden's Diss. ad Fletam*, ch. 9, sec. 3.

CLERKSHIP. In practice. The period during which a person is required to serve in the office of a practising attorney or solicitor, in order to qualify himself to practice as an attorney or solicitor. The person so serving is properly termed a *clerk*, and in England, (from the circumstance of his being bound by written articles) an *articled clerk*. 1 *Tidd's Pr.* 61—70. 1 *Archb. Pr.* 14—18. *Arch. New Pr.* 105. *Stat. 6 & 7 Vict. c. 73*.

In old English practice. The art of drawing pleadings and entering them on record in Latin, in the ancient court hand; otherwise called "skill of pleading in actions at the common law." *Towns. Pl.* 1—5, 12—25, *et passim*. Clerkship, in the court of Common Pleas, was formerly a distinct profession of itself. *Id.* 2. See *Court hand, Law Latin*.

CLERONIMUS. L. Lat. An heir. 3 *Mon. Angl.* 129. *Whishaw*.

CLERUS. L. Lat. [from Gr. *κληρος*, a lot or patrimony.] In old English law. The clergy. *Ad specialem requisitionem prælatorum et cleri regni*; at the special request of the prelates and clergy of the realm. *Reg. Orig.* 289 b. *Articuli cleri*; articles of the clergy. See *Articuli cleri*.

CLIENS. Lat. In the Roman law. A client or dependant. One who depended

upon another as his patron or protector, adviser or defender, in suits at law and other difficulties; and was bound in return, to pay him all respect and honor, and to serve him with his life and fortune in any extremity. *Dionys. ii. 10. Adam's Rom. Ant. 33.*

**CLIENT.** A person who employs or retains an attorney, solicitor, proctor or counsellor, to appear for him in courts; advise, assist and defend him in legal proceedings; and to act for him in any legal business.

Client is entirely a relative term, and is obviously derived from the Lat. *cliens*, (q. v.) It seems to be essentially a French word, and is thus used by Britton: *Et come ascun soit issi fait attorne, mes ne se p'ra repentir pendaunt la p'ole, sauns la volente son client*; and where one has been thus made an attorney, he may not afterwards repent or withdraw during the plea, without the consent of his client. *Britt. c. 126.*

**CLIENTELA.** Lat. [from *cliens*, q. v.] The state of a client; clientship; protection, patronage, guardianship. Applied to the relation of a church to its patron. 2 *Bl. Com. 21.*

**CLITO.** L. Lat. [from Gr. *κλυτός*, illustrious.] In Saxon law. The son of a king, or emperor. The next heir to the throne; the Saxon Adeling. *Spelman, vocc. Clito, Adelingus.*

**CLOS.** L. Fr. Shut up. *Si les bestes soient clos dedens mason*; if the beasts be shut up within a house. *Britt. c. 27.*

Close, closed. *Brefe clos*; a writ close. *Id. c. 73.*

**CLOSE.** [Lat. *clausum*, q. v.] A portion of land, as a field, enclosed, as by a hedge, fence or other visible enclosure.\* 3 *Bl. Com. 209.*

The interest of a person in any particular piece of ground, whether actually enclosed or not. *Id. ibid. 7 East, 207. Doct. & Stud. dial. 1, c. 8.*

Every man's land is, in the eye of the law, *enclosed* and set apart from his neighbor's; and that either by a *visible* and material fence, as one field is divided from another by a hedge; or by an *ideal* invisible boundary, existing only in the contemplation of law, as when one man's land adjoins to another's in the same field. 3 *Bl. Com. 209, 210.* In common acceptation, *close* means an enclosed field; but in law it rather signifies the separate interest of the party in a particular spot of land, whether enclosed

or not. 7 *East, 207. Doct. & Stud. dial. 1, c. 8.*

The idea of a *close* as a piece of land adjoining and enclosing a dwelling-house, and peculiarly privileged from entry or invasion, is of very great antiquity in European law, and is clearly traced by Montesquieu to the habits of the ancient Germans, of whom it is said by Tacitus,—*Suum quisque domum spatio circumdat*; every one surrounds his house with a space of ground. *De Mor. Germ. c. 16.* Montesquieu translates this passage "*chacun laisse autour de sa maison un petit terrain ou space, qu'est clos et fermé*," and refers to some of the laws of the barbarian codes (as the law of the Allemans, c. 10, and the law of the Bavarians, tit. 10, § 1, 2;) as containing decrees against those who threw down this enclosure, as well as against those who broke into the house. *Esprit des Loix*, liv. 18, c. 22. This enclosure was called *curtis* (a court) in the ancient charters. See *Court, Curtis.*

**CLOSE.** [L. Fr. *clos*; L. Lat. *clausus*, *clausum*, *clausi*, *clausæ*.] In practice. Close or sealed up. A term applied to writs and letters, as distinguished from those that are open or patent, (*patentes*.) See *Clausum, Close writs.*

**CLOSE (or CLAUSE) WRITS, or WRITS CLOSE.** [L. Lat. *brevia clausa*.] In English practice. Writs directed to the sheriff, as distinguished from those which were directed to the lord, which were called patent. 3 *Reeves' Hist. Eng. Law, 45.* This distinction prevailed in writs of right, some being patent, and others close. *F. N. B. 1 F. Id. 11 F. Cro. Eliz. 158.* The term *close* (writ close) is still occasionally applied to writs, and is derived from the circumstance of the writ being *close* folded up, with the wax round it; being thus distinguished from a writ *patent*, which, although folded up, is sealed at the end of the label which issues from the same piece of parchment, and surrounds the writ. *Sewell's Law of Sheriff, 372.*

Letters of the king, sealed with his great seal, directed to particular persons, and for particular purposes, which, not being proper for public inspection, are *closed up* and sealed on the outside, and are therefore called *writs close*, (*literæ clausæ*), and are recorded in the *close rolls*, in the same manner as writs or letters patent are in the *patent rolls*. 2 *Bl. Com. 346.*

The terms *writ* and *letter*, or *letters*, appear to have anciently been synonymous. Writs were in England, from the earliest period,

framed in the style of letters or epistles, and are frequently described as such. See *Breve, Epistola, Litera, Writ*. Letters of attorney, on the other hand, were frequently termed *writs*. *Bract*. fol. 40. The ancient justices in eyre acted under the authority of writs or commissions directed to them. Where there were several, each justice had a writ specially directed to himself, called *breve clausum*, a close writ. Besides this, there was a writ directed to all of them jointly, called *breve patens*, a writ patent, which was publicly read at the opening of the eyre, as their warrant for holding the court. *Bract*. fol. 108, 109, *et seq.* *Id.* fol. 115 b.

**CLOSE or CLAUSE ROLLS.** [L. Lat. *rotuli clausi*.] Rolls preserved among the public records in England, containing the records of the writs or letters close, and other documents. 2 *Bl. Com.* 346. *Hubback's Evid. of Succession*, 619.

Mr. Hubback observes that these close or "clause" rolls contain many important documents relative to the prerogatives of the crown, and other matters of a very miscellaneous nature. Among their contents he enumerates writs of summons to parliament, and for the expenses of knights, citizens and burgesses, proclamations, enrollments of deeds between party and party, liveries and seisin of land, with a great variety of instruments, too numerous to be recounted. Like the patent rolls, some of them are deposited in the Tower, and some at the Rolls' Chapels. The former comprise those from their earliest existing date, 6 John, A. D. 1204, to the end of the reign of Edward IV. The latter, beginning with Edward V., are continued down to a recent period. *Hubback's Evid. of Succession*, 619, 620.

**CLOSE COPIES.** In old English practice. Copies of papers which might be written as close as the writer pleased; as distinguished from *office copies*, which were required to contain a certain determinate number of words in a sheet. 2 *Burr.* 1177—1181.

**CLOUGH.** A valley. *Domesday*.

An allowance for the turn of the scale, on buying goods wholesale by weight. *Whishaw*.

**COADJUTOR.** Lat. [from *coadjuvare*, to help or aid.] A fellow helper; one who aids or assists another (*qui auxiliatur alteri*.)

*Co. Litt.* 181 a. Applied by Littleton to one who assists another in a disseisin. *Litt.* sect. 278.

**COADUNATIO.** L. Lat. [made up of *con*, together, *ad*, to, and *una*, together.] In old English law. A uniting of persons together; a combination or conspiracy. 9 *Co.* 56.

**COARCTARE.** Lat. [from *con*, together, and *arctus*, close.] To straiten, restrain, narrow, limit or confine. Bracton uses *coarctari* as the opposite of *ampliari*. *Bract*. fol. 17 b. *Coarctata*; limited or restrained.

**COARCTATIO.** Lat. [from *coarctare*, q. v.] A restriction or limitation. *Bract*. fol. 22 b.

**COCKET, Coquet.** [L. Lat. *cockettum*.] In English law. A seal belonging to the custom-house. *Reg. Orig.* 192. *Pars sigilli quod dicitur cocket*. *Id. ibid.* 3 *Salk.* 172.

A scroll or piece of parchment, sealed and delivered by the officers of the custom-house to merchants, as a warrant that their merchandizes are customed. *Stat. 11 Hen. VI.*, c. 16. Anciently called *litera de cocketto*, or *litera testimoniales de cocketto*. *Reg. Orig.* 279. *Cowell*. *Blount*. *Spelman*, voc. *Cockettum*.

**COCKETTARE.** L. Lat. [from *cockettum*.] In old English law. To cocket. *Cockettari*; to be cocketted, that is, furnished with a cocket, or certificate that goods are customed. *Reg. Orig.* 279. *Lana ponderata et cockettata*,—*customata et cockettata*; wools weighed and cocketted,—customed and cocketted. *Id. ibid.*

**CODE.** [Lat. *codex*.] A body of laws; a collection or compilation of laws, by public authority.\*

A code may be either a mere compilation of existing laws, (though this is more properly a *digest*,) or a new system of laws founded on new fundamental principles. *P. Cyclopædia*.

**CODE CIVIL.** A code of law prepared under the direction of Napoleon, and promulgated in 1804, as the civil law of France, (*Code Civil des Français*.) Under the Empire its name was changed to that of *Code Napoleon*, by which it is still often designated, though it has now officially resumed its original title of *code civil*. In its general arrangement and distribution, it resembles



the Institutes of Justinian. It consists of three books, divided into titles or heads, each of which is subdivided into chapters and sections. *P. Cyclopædia.*

**CODE OF JUSTINIAN.** [Lat. *Codex Justinianus.*] A collection of imperial constitutions in twelve books, compiled by Tribonian and nine associates, under the direction of Justinian, A. D. 529; and so called to distinguish it from the code of Theodosius, (q. v.) published about a century before. This code was the first of the four collections of law which make up the *Corpus Juris Civilis*, (q. v.) A new edition, called *Codex repetitæ prælectionis*, was published by Justinian, A. D. 534. 1 *Bl. Com.* 81. *Inst.* præm. § 2. *Cooper's notes*, in loc. 1 *Kent's Com.* 537. 1 *Mackeld. Civ. Law*, 51, § 61; 57, § 69; 92, § 101. The old code, called *Codex Vetus*, is now lost. *Id.* 51, § 61.

The code is sometimes cited thus:—Const. 22, C. 4. 35—that is, the 22d constitution Code, book 4, tit. 35. Sometimes more simply:—*Cod.* 4. 35. 22.

**CODE OF THEODOSIUS**, more properly and usually called **THEODOSIAN CODE.** [Lat. *Codex Theodosianus.*] A code compiled by the emperor Theodosius the younger, A. D. 438, (or 435, according to Selden,) being a methodical collection, in sixteen books, of all the imperial constitutions then in force. It was the only body of civil law publicly received as authentic in the western part of Europe till the twelfth century, the use and authority of the Code of Justinian being during that interval confined to the East. 1 *Bl. Com.* 81. *Selden's Diss. ad Flet.* c. 6, sect. 1.

**CODE NAPOLEON.** See *Code civil.*

**CODEX.** Lat. A code or collection of laws; particularly the code of Justinian. The Code and Digest appear to be more frequently referred to by the old English law writers, than the other parts of the civil law. Bracton introduces them both in an illustration of a consideration. *Do tibi digestum ut des mihi codicem*; I give you a Digest that you may give [in consideration of your giving] me a Code. *Do tibi codicem ut facias mihi scribi digestum*; I give you a code, that you may have a copy made for me of a Digest. *Bract.* fol. 19.

**Codex.** A book or manuscript.

A copy or counterpart of a written instrument, as a will. *Inst.* 2. 10. 13.

**CODEX GREGORIANUS.** A collection of imperial constitutions made by *Gregorius*, a Roman jurist of the fifth century, about the middle of the century. It contained the constitutions from Hadrian down to Constantine. 1 *Mackeld. Civ. Law*, 44, § 54.

**CODEX HERMOGENIANUS.** A collection of imperial constitutions made by *Hermogenes*, a jurist of the fifth century. It was nothing more than a supplement to the *Codex Gregorianus*, (*supra.*) containing the constitutions of Diocletian and Maximilian. 1 *Mackeld. Civ. Law*, 44, § 54.

Mr. Long contends that the proper names of these jurists are *Gregorianus* and *Hermogenianus*, instead of *Gregorius* and *Hermogenes*. *Long's Discourses*, 80. But Selden and other eminent writers make constant use of the latter names, without objection. According to Selden, *Gregorius* and *Hermogenes* were heathen civilians who lived in the time of the Constantines, and fearing lest by the new constitutions of the christian princes, the heathen jurisprudence should be lost, they applied themselves to the compiling their codes, in which they united together the laws of the heathen emperors from Adrian down to Diocletian, in order as much as possible to preserve the ancient. But all that remains of these two codes are some fragments which Cujacius has placed at the end of the *Theodosian code*. *Seld. Diss. ad Flet.* c. 5, sec. 2, p. 78, note.

**CODEX JUSTINIANEUS.** The code of Justinian; so called by Justinian himself. *Const. Cordi nobis, de emendat. Cod.* § 5, cited 1 *Mackeld. Civ. Law*, 51, § 61, note (c).

**CODEX REPETITÆ PRÆLECTIONIS.** The new code of Justinian; or the new edition of the first or old code, promulgated A. D. 534, being the one now extant. 1 *Mackeld. Civ. Law*, 57, § 69. See *Code of Justinian.*

**CODEX THEODOSIANUS.** The code of Theodosius. See *Code of Theodosius.*

**CODEX VETUS.** The old code. The first edition of the code of Justinian; now lost. 1 *Mackeld. Civ. Law*, 51, § 61.

**CODICIL.** [Lat. *codicillus*, q. v.] A supplement to a will, or an addition made by the testator, and annexed to, and to be taken as part of a testament, by which its dispositions are explained, added to, or

altered.\* 2 *Bl. Com.* 500. 4 *Kent's Com.* 531. 1 *Steph. Com.* 545. — A testamentary disposition subsequent to a will, and by which the will is altered, explained, added to, subtracted from, or confirmed by way of republication, but in no case totally revoked. 2 *Wooddes. Lect.* 284. De Grey, C. J., 3 *Wils.* 513. For general purposes, a codicil is considered as a will, the distinction between them existing only in their relation to each other. 1 *Powell on Devises*, 20, note (4). 1 *Steph. Com.* 545. By the new English Statute of Wills, 7 *Will.* IV., and 1 *Vict.* c. 26, the term *will* is to be taken as including a *codicil*. And the rule is the same in the state of New-York. 2 *Rev. Stat.* [68, § 71.] 12, § 78. So that a codicil must be executed with the same formalities, and proved in the same manner as the will itself. 4 *Kent's Com.* 531. See 7 *Hill's N. Y. Rep.* 346. 12 *Gill & Johns.* 288.

The name, and, in some sense, the modern use of a codicil, are taken from the *codicillus* of the Roman law, which, however, was, in many respects, a very different instrument. See *Codicillus*. Two definitions of the term are given in the old dictionaries. The last in order is substantially the modern definition, but the first, and apparently the preferred one, is in the following words: "A codicil is the will or testament of a man, concerning that which he would have done after his death, *without the appointing of an executor.*" *Termes de la ley*. "A codicil is the same with a testament, but that it is *without an executor.*" *Cowell. Blount*. This definition seems to be modelled after the idea of a *codicillus* in the Roman law, which was merely an informal, and subordinate, but distinct and independent species of will. See *Codicillus*. Its peculiar feature, however, is that which denies to a codicil the *appointment* of an *executor*. Dr. Wooddeson observes on this point, as if in explanation of this peculiarity, that codicils were never thought to *require* the appointment of a *new executor* to carry them into execution. 2 *Wooddes. Lect.* 284. In this view, no doubt, we may still say with propriety that a codicil is "*without the appointment of an executor.*" But that the old definition signified something more is obvious from the language of Swinburne, who expressly lays down the position that a codicil does not *admit* the appointment of an executor, and bases upon that circumstance the peculiar and principal distinction between it and a will. *Swinburne on Wills*, part 1, § 5, n. 3, p. 13. It is hardly necessary to

say that this doctrine of Swinburne's is not now law. 2 *Wooddes. Lect. ub. sup.*

**CODICILLUS.** Lat. [a little book, dimin. of *codex*, a book.] In the Roman law. A codicil; an informal and inferior kind of will, in use among the Romans. Its peculiarities were, that it required no solemnity in its execution, (*nullam solemnitatem ordinationis desiderant*;) that an inheritance could neither be given nor taken away by it, except through a trust; and that it might be made *before* as well as after a testament. *Inst.* 2. 25. 1, 2, 3. In all these particulars, but especially the last, this instrument was the very opposite of the modern codicil. *Supra*. Indeed, by the express declaration of Justinian, the law of wills and that of codicils were established upon entirely different foundations, (*ne confundatur jus testamentorum et codicillorum.*) *Inst.* 2. 25. 2.

The expression *nullam solemnitatem* in the Institutes (*supra*) is not generally understood literally to mean that *no* solemnity *whatever* was required in the execution of a codicil; but only that a *less* degree of solemnity was necessary than in case of a will. *Cooper's Justinian*, Notes in *loc.*

**COE.** An abbreviation of *commune*. *Coer*; a commoner. *Les coes*; the commons. *Kelhum*.

**COEMPTIO.** Lat. Mutual purchase. One of the modes in which marriage was contracted among the Romans. The man and the woman delivered to each other a small piece of money. The man asked the woman, *An sibi materfamilias esse vellet*, whether she would become to him a *materfamilias* (mistress of his family); to which she replied that she would, (*se velle.*) In her turn she asked the man whether he would become to her a *paterfamilias*, (master of a family.) On his replying in the affirmative, she delivered her piece of money and herself into his hands, and so became his wife. *Adam's Rom. Ant.* 501. *Cooper's Justinian*, Notes \*421.

**COGNATES.** [Lat. *cognati*.] Relations by the mother's side, or by females. 1 *Mac-keld. Civ. Law*, 137, note. A common term in Scotch law. *Ersk. Inst.* b. 1, tit. 7, § 4.

**COGNATI.** Lat. In the civil law. Cognates; relations by the mother's side. 2 *Bl. Com.* 235. Relations by, or through females; (*qui per feminini sexus personas cognatione junguntur.*) *Inst.* 1. 15. 1. *Id.*

3. 5. A man's cognates are his mother, grandmother, (mother's mother,) mother's brother, mother's sister, sister's son, &c. 1 *Mackeld. Civ. Law*, 137, note.

Relations generally; properly, by blood; persons of the same blood; (from *con*, together, and *nati*, born;) as though *born together*, (Gr. *συγγενεις*;) or sprung from the same source. *Dig.* 38. 10. 4. 1. *Id.* 38. 10. 10. 1.

COGNATIO. Lat. In the civil law. Cognation. Relationship, or kindred generally. *Inst.* 3. 6. pr. *Bract.* fol. 67.

Relationship through females, as distinguished from *agnatio*, or relationship through males. *Agnatio a patre sit, cognatio a matre.* *Inst.* 3. 5. 4.

The use of this word, (like that of *cognati*), sometimes in one of these senses, and sometimes in the other, as it occurs in the civil law often in the same paragraph, renders a correct translation a matter of some difficulty. Thus, in the following passages: *Sunt autem agnati cognati per virilis sexus cognationem conjuncti, quasi a patre cognati.* — *At qui per feminini sexus personas cognatione junguntur, agnati non sunt, sed alias naturali jure cognati.* *Inst.* 1. 15. 1. Here both *cognati* and *cognatio* are used in their general sense, in explaining *agnati*, and the passages may be translated thus: *Agnates* are relations (*cognati*) united by a relationship (*per cognationem*), of the male sex, as though related (*cognati*, born together, having a common origin) from (by, or on the part of) the father.—But those who are united in relationship (*cognatione*) through persons of the female sex, are not *agnati*, but otherwise related by a natural tie. Here the meaning of *cognati* begins to change from general to particular, or to the technical meaning which was given to it in contrast with that of *agnati*. And this is fully brought out in the sentence which immediately follows: *Itaque amicus tuæ filius, non est tibi agnatus, sed cognatus, &c.* Therefore the son of your paternal aunt is not an *agnate* to you, but a *cognate*. See also *Inst.* 3. 5. 4. On the other hand, *cognatio* is used in the general sense of relationship throughout the sixth title of the third book of the Institutes. *Agnatio* is called by Justinian a technical term of law, (*agnatio juris civilis nomen est*), and was so distinguished from *cognatio*, which rests on the broader basis of natural law. *Inst.* 1. 15. 3. See *Agnatio*. So *cognatus* is called in the Digests a natural term (*nomen naturale*); and the same passage, quoting Paulus, explains *cognatus* and *agnatus* (or *adgnatus*) to differ

as genus and species. Every *agnatus* was a *cognatus*, but not *e converso*. *Dig.* 38. 10. 10. 4.

COGNATIO. Lat. In the canon law. Consanguinity, as distinguished from affinity. 4 *Reeves' Hist. Eng. Law*, 56—58.

Consanguinity, as including affinity. *Id. ibid.*

COGNATIO. Lat. In the common law. Cousenage, or cosinage. See *Cosinage*.

COGNATUS. Lat. In the civil law. A relation by the mother's side; a cognate. A relation, or kinsman, generally. See *Cognati, Cognatio*.

COGNISANCE, *Cognizance, Conusance*. [L. Lat. *cognitio*, q.v.] In practice. Acknowledgment or recognition of right. That part of a fine in which the defendant *acknowledged* that the land in question was the right of the complainant. 2 *Bl. Com.* 350. From this the fine itself derived its name, as being *sur cognizance de droit*, &c., and the parties their titles of *cognizor* and *cognizee*. *Id.* 351—353.

Acknowledgment, confession or admission. The name of an answer made by a defendant in an action of replevin, where he has acted as bailiff to another in making a distress, by which he *acknowledges* the taking, but insists that such taking was legal, as he acted by the command of one who had a right to distrain. 3 *Bl. Com.* 149. See *Cognoscere*.

Judicial notice, or examination; the hearing of a matter judicially. As, "to take *cognizance* of a cause." *Cowell. Blount*.

Jurisdiction of a court over a cause, usually of an exclusive character. Cognisance (or rather *conusance*) of pleas in English law is a privilege or franchise granted to a city, town or corporation, and sometimes to an individual, to hold pleas, (i. e. to hold courts and hear causes,) within the precinct of the franchise. *Termes de la ley*, voc. *Conusance*. See *To hold pleas*. And it involves the power of calling a cause or plea out of another court in which it has already been commenced. *Id. Cowell. 2 Arch. Pract.* 191: The claim of *conusance* very seldom occurs in practice, and the few modern instances to be found in the books, are of claims by the universities of Oxford and Cambridge. *Arch. N. Pract.* 234.

COGNITIO. Lat. [from *cognoscere*, to know, to understand, to hear, to acknowledge, to confess.] In old English law.

The acknowledgment of a fine; the certificate of such acknowledgment. *Potestas recipiendi cognitiones*; the power of taking acknowledgments. *Reg. Orig.* 168 b. *De cognitionibus certificare*; to certify (give a certificate) of acknowledgments. *Id. ibid.*

Cognizance, or jurisdiction. *Hujusmodi causæ cognitio ad forum spectat ecclesiasticum*; the cognizance of this kind of cause belongs to the ecclesiastical tribunal. *Bract.* fol. 302 b. *Artic. Cleri*, c. 6.

COGNITIO. Lat. In the Roman law. The judicial examination or hearing of a cause. *Plin. Epist.* vii. 33.

COGNITOR. L. Lat. [from *cognoscere*, to acknowledge.] In old English law. One who acknowledges; a cognisor, or conusor. See *Cognizor*.

COGNITOR. Lat. In the Roman law. An advocate or defender in a private cause. *Adam's Rom. Ant.* 280.

COGNIZATUS. L. Lat. [from *cognoscere*, to acknowledge.] In old English law. One to whom an acknowledgment is made; a cognizee, or conusee. See *Cognizee*.

COGNIZOR, *Conusor*. [L. Lat. *cognitor*.] In old conveyancing. The party levying a fine. 2 *Bl. Com.* 350, 351. The party defendant in the proceedings, who acknowledged the other party's right to the land in question.\*

COGNIZEE, *Conusee*. [L. Lat. *cognizatus*.] The party to whom a fine was levied. 2 *Bl. Com.* 351. The party plaintiff in the proceedings, to whom the other party's acknowledgment of his right to the land in question was made.\*

COGNOMEN. Lat. In the Roman law. The last of the three names by which all Romans, at least those of good family, were designated. The first, or *prænomen*, served to denote the individual; the second, or *nomen*, the class or *gens*, and the third, or *cognomen*, the house or *familia* to which he belonged. *Inst.* 2. 20. 29. *Adam's Rom. Ant.* 35. *Brande*. There was sometimes a fourth name, termed *agnomen*, (q.v.) *Inst. ub. sup.*

In English law. A surname. *Cognomen majorem est ex sanguine tractum, hoc intrinsecum est; agnomen extrinsecum, ab eventu*; a cognomen or surname is derived from the blood of one's ancestors, this is intrinsic; an agnomen is extrinsic, (or of foreign origin,) being derived from some event. 6 *Co.* 65.

COGNOSCERE. Lat. In old practice. To acknowledge. *Bene cognoscit captionem*; he well acknowledges the taking. 1 *Salk.* 3, pl. 8. *Cognovit*; he has acknowledged. See *infra*.

COGNOVIT ACTIONEM. L. Lat. (He hath acknowledged the action); sometimes simply termed a COGNOVIT. In practice. A written confession of an action at law, signed by the defendant, or his attorney, given to the plaintiff after receiving his declaration, and before plea. In substance, it acknowledges the demand to be just, and authorizes the plaintiff to enter judgment for a sum named, either absolutely, or upon specified conditions.\* 1 *Tidd's Pr.* 559. Where it is given after plea pleaded, it is usually termed a *relicta*, or *relicta* and *cognovit*. *Id. ibid.* See *Relicta*.

COHABITARE. L. Lat. [from *con*, together, and *habitare*, to dwell, or be often with.] In old English law. To live with, or together, as husband and wife; to be often with, or together; to cohabit. *Stat. Westm.* 2, c. 34.

COHÆRES. Lat. [from *con*, together, and *hæres*, an heir.] In old English law. A co-heir, or joint heir. *Co-hæredes*; co-heirs. A term applied to coparceners, who constitute, as it were, one heir or body; (*quasi unum corpus propter unitatem juris quod habent*.) *Bract.* fol. 76 b, 67 b. *Cohæres particeps cum cohærede particeps*; coparcener with coparcener. *Id.* fol. 97 b.

COHERTIO. L. Lat. [from *coercere*, corrupted to *cohercere*, to compel.] In old English law. Coercion; the coercive power of a court. *Bract.* fol. 344. *Stat. Westm.* 2, c. 34. Lord Coke uses *cohortion* as an English word. 2 *Inst.* 436.

COIF. [L. Lat. *coifa*, from Fr. *coiffe*; *birretum*.] In English practice. A covering for the head, formerly worn as a distinctive badge by serjeants at law, (*legmen capillare album quo insigniuntur servientes ad legem*.) *Spelman*, voc. *Coifa*. It is mentioned by Matthew Paris as early as A. D. 1259, under the name of *coifa*, from the Fr. *coiffe*. Sir John Fortescue calls it *birretum*, (q.v.) *De Laud. Leg. Angl.* c. 50. The original use of this covering is supposed to have been, to conceal the clerical tonsure, (q.v.) *Matt. Par. apud Spelman*, *ub. sup.*

COIFA. L. Lat. A coif. *Spelman*. See *Coif*.

COILLER. L. Fr. To collect. *Britt.* c. 21.

COLIBERTUS, *Collibertus*, *Conlibertus*, (plur. COLIBERTI.) L. Lat. *Coliberti*, or *coleberti*, are a class of inferior tenants mentioned in Domesday, whom Lord Coke considers to have been tenants in free socage by free rent. *Domesday*, cited in *Cowell. Co. Litt.* 5 b, 86 a. Cowell defines them also to be such as being villeins, were manumitted.

COLLATERAL. [L. Lat. *collateralis*, from *con*, together, and *lateralis*, on the side.] Connected by, or on the side.\* That which comes in, or adheres to the side of any thing. *Termes de la ley. Heirides a latere venientes*; heirs coming in, or from the side, collateral heirs. *Bract.* fol. 20 b. Answering to the *ἐκ πλάγιου κατιόντες* in the Greek of the civil law. *Nov.* 118, c. 3.

That which is *beside* another thing; additional. See *infra*.

COLLATERAL CONSANGUINITY or KINDRED. [Lat. *cognatio a latere*.] That kind of consanguinity, kindred or relationship which exists between persons who are descended from one and the same stock or ancestor, whether near or remote; as between two brothers descended from the same father, or between two cousins descended from the same grandfather. 2 *Bl. Com.* 204, 205. It is thus distinguished from *lineal* consanguinity, in which the relatives are descended the one from the other. *Id.* 204. See *Lineal consanguinity*.

*Lineal* consanguinity being usually represented by a perpendicular or *right line*, (*linea recta*), in which the kindred are ranked relatively, one above or below the other, as father, son, grandson, *collateral* consanguinity is properly denoted by one or more *transverse* lines, crossing this, or proceeding *obliquely* from it *on the side* (*a latere*) upon which the kindred are ranked in their order. See *Dig.* 38. 10. 9, 10.

COLLATERAL ISSUE. In practice. An issue taken upon matter *aside* from the intrinsic merits of the action, as upon a plea in abatement; or *aside* from the direct and regular order of the pleadings, as on a demurrer. 2 *Arch. Pr.* 1, 6; book 2, part 1, 2.

The term *collateral* is also applied in England to an issue raised upon a plea of diversity of person, pleaded by a criminal who has been tried and convicted, in bar of execution, viz: that he is not the same person who was attainted, and the like. 4 *Bl. Com.* 396

COLLATERAL LIMITATION. In the law of estates. A limitation of an estate which gives an interest for a specified period, but makes the right of enjoyment to depend on some *collateral* event; as a limitation of an estate to a man and his heirs, tenants of the manor of Dale, or to a woman during widowhood, &c. 4 *Kent's Com.* 128.

COLLATERAL SECURITY. A security in addition to or *besides* another, or principal security; to be resorted to in case of failure of the principal security. A bond in this sense is collateral security to the mortgage which it accompanies, although the mortgage, in its form, purports rather to be collateral to the bond.\* *Termes de la ley*.

COLLATERAL WARRANTY. A warranty of lands, collateral to the title of the heir, or him upon whom the warranty falls; a warranty made by a person who is collateral to the title, i. e. a person out of the line, or *on the side* (*a latere*) of the title, and through whom the title did not pass.\* *Litt.* sect. 717. Described in the books to be "where the heir's title to the land neither was, nor could have been derived from the warranting ancestor." 2 *Bl. Com.* 301. 4 *Kent's Com.* 469. Story, J., 1 *Sumner's R.* 262. As where a younger brother released to his father's disseisor with warranty, this was collateral to the elder brother. *Litt.* sect. 705, 707. So where a son purchased lands in fee, and his father disseised him, and aliened to another with warranty, and died, this was a collateral warranty to the son. *Id.* sect. 704, 705. See 2 *Hilliard's Real Prop.* 361, 362. *U. S. Digest and Supplement*, Collateral warranty. See *Lineal warranty*.

The distinction between *lineal* and *collateral* warranty seems to have always been a subtle one, and not easily apprehended; and the most careful definitions given in the books are not free from obscurity, owing in a great degree to the peculiar meaning given to the word *collateral*. Lord Coke, in commenting upon Littleton, (sect. 717,) observes that "it is not adjudged in law a collateral warranty in respect of the blood, for the warranty may be collateral, albeit the blood be lineal, and the warranty may be lineal, albeit the blood be collateral. But it is in law deemed a collateral warranty in respect that *he that maketh the warranty is collateral to the title of him upon whom the warranty doth fall*." *Co. Litt.* 376 a.

COLLATERALES ET SOCI. L. Lat.

Assistants and associates [of the chancellor.] Former titles of masters in chancery. 2 *Reeves' Hist. Eng. Law*, 251.

**COLLATIO.** Lat. [from *conferre*, to bring or put together; to confer.] A bringing or putting together. See *Collatio bonorum*.

A comparison of two things by putting them together. *Collatio signorum* or *sigillorum*; comparison of seals. The ancient mode of testing the genuineness of a seal, by comparing it with another known to be genuine. *Bract.* fol. 389 b, 398 b. Hence probably the modern *comparison of hands* or signatures, for a similar purpose of proof.

A conferring or bestowment of a thing; collation. *Reg. Orig.* 31 b. See *Collation*.

**COLLATIO BONORUM.** In the civil law. A bringing together of goods or property into a common fund; especially of property received of a testator by way of advancement, for the purpose of a more equitable division among the heirs. *Dig.* 37. 6. 1. *Cooper's Justin. Inst. Notes*, \*574, 575.

This term has been applied, in the common law, to the bringing of any portion or sum of money advanced by a father to a son or daughter into *hotchpot*, or common fund, in order to have an equal share with the other children, of his personal estate when he dies, in pursuance of the statute of distributions. *Tomlins.* 2 *Bl. Com.* 517. 4 *Kent's Com.* 419. 1 *Sumner's R.* 421. See *Hotchpot*.

In Louisiana, this return of property to the mass of the succession is termed *collation*, or, in French, *rappor*t. *Civil Code of Louisiana, Art.* 1305—1367. 4 *Kent's Com.* 419, note.

**COLLATION TO A BENEFICE.** [L. Lat. *collatio beneficii*.] In English ecclesiastical law. The conferring or bestowing of a benefice by the bishop, where he has himself the advowson or right of patronage, and which single act of collation effects all that is done in common cases by the acts of *presentation* and *institution*. 2 *Bl. Com.* 22. Or, in other words, the presentation and institution are one and the same act, and taken together are called a *collation*. 1 *Bl. Com.* 391. 1 *Wooddes. Lect.* 193. The advowson in such cases is termed an *advowson collative*. 2 *Bl. Com.* 22.

**COLLECTORES.** L. Lat. In old English law. Collectors; persons appointed to make collections for another. In a writ of protection in the Register, granted to the

Hospital of St. John of Jerusalem, they are classed with *procuratores, attornati* and *nuncii*. *Reg. Orig.* 282 b.

**COLLEGATARIUS.** Lat. In the civil law. A co-legatee. *Inst.* 2. 20. 8.

**COLLEGIALITER.** L. Lat. [from *collegium*, q. v.] In a corporate capacity. 2 *Kent's Com.* 296.

**COLLEGIUM.** Lat. [from *colligere*, to gather together.] In the civil law. An association of persons, usually of the members of a trade; a corporation, company, or college; otherwise called *universitas*. *Dig.* 3. 4. 7, *et per tot.* It necessarily consisted of three persons at least, (*tres faciunt collegium*.) *Dig.* 50. 16. 85. A *collegium* which was confirmed by special enactment, or by a *senatus consultum*, or an imperial constitution, was called *collegium licitum*, or *legitimum*. Otherwise it was illegal, (*illicitum*.) *Dig.* 47. 22. 3. 1. 2 *Kent's Com.* 268, 269. As to the application of this word in English law, see *Dyer*, 233 b. 267.

**COLLEGIATE CHURCH.** In English ecclesiastical law. A church built and endowed for a society or body corporate of a dean or other president, and secular priests, as canons or prebendaries in the said church. Such as the churches of Westminster, Windsor, and others. *Cowell*.

**COLLIGENDUM BONA DEFUNCTI.** See *Ad Colligendum*.

**COLLISION.** [Lat. *collisio*, from *collidere*, to dash together; Fr. *abordage*.] A dashing, or violently running together. Usually applied to the running foul of vessels. Sometimes distinguished from *allision*, (q. v.) *Jacobsen's Sea Laws*, 324. *Strykius de Collis. Nav.* cited *ibid.* 3 *Kent's Com.* 230, 302, note. *Abbott on Ship.* part 3, ch. 1.

**COLLISTRIGIUM.** L. Lat. [quasi *collum stringens*, binding the neck.] In old English law. The pillory. *Spelman. Cowell*, voc. *Pillory*. Called in Saxon *halsfang* or *healsfang*. See *Healsfang*, *Pillory*.

**COLLOBIUM.** L. Lat. A hood or covering for the shoulders, formerly worn by serjeants at law, (*cucullus, sive superhumeralis, quo induuntur servientes ad legem*.) *Spelman*.

**COLLOQUIUM.** L. Lat. [from *collo-*

*qui*, to speak together, to converse.] In pleading. Conversation, discourse. A term applied to that part of the declaration in actions of slander, where it is alleged that the defendant spoke the words in a certain discourse or conversation (*in quodam colloquio*), which he had with others, or with the plaintiff in the presence of others, concerning the plaintiff; and which is followed by an averment that the words were spoken of and concerning the plaintiff. 2 *Chitt. Pl.* 633. Bronson, J., 2 *Hill's N. Y. Rep.* 282, 284. The term *colloquium* is also sometimes applied to the whole of this averment. 1 *Chitt. Pl.* 403. 1 *Starkie on Slander*, 383. *Cooke on Defamation*, 92.

**COLLUSION.** [Lat. *collusio*, from *coludere*, to play together.] A deceitful agreement or compact between two or more persons, for the one party to bring an action against the other for some evil purpose, as to defraud a third party of his right. *Cowell. Reg. Orig.* 179. *Termes de la ley*.

**COLNE.** Sax. In Saxon and old English law. An account or calculation. 1 *Reeves' Hist. Eng. Law*, 284, note. Otherwise written *cone*. *Bract.* fol. 86 b. *Spelman*, voc. *Cone et Key*. *Cowell*. See *Cone & Key*.

**COLONUS.** Lat. [from *colere*, to cultivate.] A husbandman; an inferior tenant employed in cultivating the lord's land. A term of Roman origin, corresponding with the Saxon *ceorl*. 1 *Spence's Chancery*, 51.

**COLONIA, Colonica.** L. Lat. A portion of land assigned to a single *colonus* for cultivation, as a task, (*ad unius coloni pensum designata*.) Or a country house, with sufficient land for the support of a husbandman and his family. *Spelman*.

**COLOR.** Lat. Colour. A term of the ancient rhetoricians, adopted at an early period into the language of pleading in actions at common law. *Steph. Pl.* 202. *Color a rhetoribus appellatur probabilis alicujus rei causa, quâ quod falsum aut turpe est velamus.* Colour is called by the rhetoricians the probable cause of any thing, with which we disguise what is false or base. *Turneb. in notis ad Quintil.* cited *Steph. Pl.* Appendix, Note (49).

In a general sense, mere appearance as distinguished from reality; the exterior or *prima facies* of a thing; a false or assumed appearance; a cover, cloak, disguise or pretext.\* See *Prima facie*, *Color officii*.

**COLORE.** Lat. By color (of a supposed estate or right.) Usually taken in a bad sense. *Towns. Pl.* 24. See *Colore officii*.

**COLOR OFFICII.** L. Lat. Colour of office. The mere semblance, shadow or false appearance of official authority.\* The dissembling face of the right of office. *Termes de la ley*. The use of official authority as a pretext or cover for the commission of some corrupt or vicious act.\* See *Colore officii*.

**COLORABLE.** See *Colourable*.

**COLORE OFFICII.** L. Lat. [L. Fr. *per colour de son office*.] By color of office; under pretence of official authority.\* This term is always taken in a bad sense (*in malam partem*), and differs from the words *virtute officii*, or *ratione officii*, which are always taken in a good sense, (*in bonam partem*;) and where the office is the just cause of the thing, and the thing is pursuant to the office. But *colore officii* implies that the thing is under pretence of office, but not duly, and the office is no more than a cloak to deceit, and the thing is grounded upon vice, and the office is as a shadow thereto. *Plowd.* 64, arg. See *Id.* 68. *Termes de la ley*.

**COLOUR.** [Lat. *color*, q. v.] In pleading. An apparent or *prima facie* right. To give colour is to admit such a right. *Steph. Pl.* 202, 203. Colour is of two kinds, implied and expressed.

*Implied colour* is that which is naturally inherent in the structure of all pleas in confession and avoidance. *Id.* 206. That is, they all *admit a right* in the opposite party, but at the same time *avoid it*.\* See *Confession and avoidance*.

*Express colour* is defined to be, "a feigned matter pleaded by the defendant in an action of trespass, from which the plaintiff seems to have a good cause or action, whereas he has in truth only an appearance or colour of cause." *Bac. Abr.* Trespass, (T. 4). Or, in the words of the author of the *Termes de la ley*, it is "feigned matter which the defendant or tenant uses in his bar [plea,] when an action of trespass or an assise is brought against him, in which he gives the demandant or plaintiff a *show at first sight* that he hath good cause of action, where in truth it is no just cause, but only the colour and face of a cause." See this subject further explained in *Stephen on Pleading*, 206, et seq. *Id.* 225. (Am. ed. 1824), et seq. 3 *Reeves' Hist. Eng. Law*, 438.

**COLOURABLE PLEADING.** The practice of giving *colour* in pleading. 3 *Reeves' Hist. Eng. Law*, 438.

**COLPARE.** L. Lat. In old English law. To lop or top, as trees; to cut off the boughs. *Cowell. Colpatura*; a lopping or topping of trees. *Id.*

**COLPICIUM.** L. Lat. *Salvis colpiciis infra boscum predictum.* The editor of *Cowell* (who is followed by *Blount*.) citing an old charter in which these words occur, supposes that by *colpiciis* is meant samplers [saplings?] or young poles, &c. The word undoubtedly is the Latin form of the English *coppice* or copse-wood; i. e. young wood, subjected to frequent cutting or lopping (*colpatura*) and probably the same with *sylvæ cædua*, (q. v.)\*

**COLUMBARIUM.** Lat. [from *columba*, a dove.] A dove-house. *Shep. Touch.* 10. *Towns. Pl.* 183.

**COMANDER, Comaunder.** L. Fr. To commit or send. *Comaundes a la prison*; committed to prison. *Britt. c.* 21.

**COMBARONES.** L. Lat. In old English law. Fellow barons; fellow citizens. The citizens or freemen of the Cinque ports being anciently called *barons*; the term *combarones* is used in this sense in a grant of Henry III. to the barons of the port of Fevresham. *Cowell.* See *Baron*.

**COMBAT.** Eng. & Fr. [L. Lat. *duellum, campus*; L. Fr. *batail, bataille*.] In old English law. The formal trial of a doubtful cause or quarrel by the swords or batons of two champions. *Termes de la ley. Cowell.* Otherwise called trial by battel. See *Battel, Duellum*.

**COMBE.** [Sax. *cumbe*, L. Lat. *comba*.] A valley. *Domesday. Cowell. Co. Litt.* 4 b, 5 b.

**COMBUSTIO DOMORUM.** Lat. In old English law. The burning of houses; house burning. A term formerly used to denote the crime of arson. 1 *Hal. P. C.* 346, [566.] 4 *Bl. Com.* 373. *Bract. fol.* 146 b.

**COMBUSTIO PECUNIÆ.** L. Lat. In old English law. The burning [that is, melting] of money. The old way of trying mixt and corrupt money, by melting it down upon payments into the exchequer. *Cowell.* In the time of King Henry II. the bishop of Salisbury being treasurer, considered

that though the money did answer *numero et pondere* (in number and weight,) it might be deficient in value, because mixed with copper or brass. Therefore, (*consilio regis, et regis simul et publicæ providere utilitati*.) a constitution was made, called the trial by combustion, the practice of which differed in little or nothing from the present method of assaying silver. *Lowndes' Essay upon Coin*, 5, cited in *Cowell*.

**COME.** L. Fr. As. *Come de det*; as of duty, (*ex debito*.) *Mirr. c.* 5, § 1. *Come ceo que il ad*, &c.; as that which he hath, &c. See *Sur cognizance*, &c.

So. *Come Dieu luy aide*; so help him God. The conclusion of the old coronation oath of the English sovereigns. 1 *Bl. Com.* 236, note.

To **COME.** In pleading and practice. To appear in court; as a party does in an action at law. A defendant in pleading is said to "*come and defend*." Where a party fails to appear, the language of the record is, that he "*comes not*, but makes default."

To **COME TO LAND.** [Fr. *venir a la terre*.] In old English law. To acquire land; to obtain possession under a title. This, together with the still used term *in*, (Fr. *eins*.) appears to be derived from the old practice of giving livery of seisin, in which the feoffee actually *went* in person to the land, and entered upon it.\* "If he *come to the land* (*s'il vient a la terre*.) by a latter title, yet the law will adjudge him *in* (*la ley lui adjugera eins*) by force of the elder title." *Litt. sect.* 659, 660. See *In*.

**COMEN.** L. Fr. Common. *La comen ley*; the common law. *Thel. Dig.* lib. 11, c. 10, ¶ 8, 21. *Le comen banke*; the common bench. *Id.* ¶ 17.

**COMENT.** L. Fr. Although, notwithstanding. *Litt. sect.* 15.

**COMES AND DEFENDS.** [L. Lat. *venit et defendit*.] A phrase of great antiquity in pleading, and hitherto always used at the commencement of a defendant's pleas and demurrers to the declaration; the word "*comes*" very appropriately and significantly expressing his appearance, and "*defends*" his defence. "And the said defendant *comes and defends* the wrong and injury, when &c., and says that," &c. *Steph. Pl.* 62, 67, 71. (Am. ed. 1824.) 1 *Burr. Pr.* 163. In the recent revision of the forms of pleadings in England, this clause has been omitted.



**COMES.** Lat. [pl. *comites*, from *comitor*, to accompany, or follow; L. Fr. *comte*.] A companion, follower or attendant. An official and honorary title of great antiquity, and very various application; originating under the Roman empire, and retained in the institutions of most of the early nations of Europe, but chiefly remarkable for its equal use in denoting the *comte* or *count* of the Franks, the *grave* or *graff* of the Germans, the *countee* of the Anglo-Normans, the *ealdorman*, *alderman*, or *shireman* of the Saxons, and finally, the *earl* of the English and Scotch. 1 *Bl. Com.* 116, 398. *Spelman. Termes de la ley*, voc. *Countee*. *Ersk. Inst.* b. 1, tit. 4, § 1. See *Count*, *Countee*, *Alderman*, *Earl*, *Grave*, *Reeve*, *Schireman*.

The origin of this title has been traced by Spelman to the household or court of the Roman emperors, who gave the name of *comites* to their personal attendants, or those who belonged to their *following* or *retinue*, (*comites vocabantur quotquot e comitatu principis erant*.) It came afterwards to be used (with the Græcobarb. *κωνης*) as a title not only of honor, but of office, and with no restriction as to grade in either; but its prevailing signification was that of *chief*, *superintendent*, or *governor*, (Gr. *αρχων*.) Thus, among other officers noticed at length by Spelman, the *comites provinciarum* were the rulers or governors of provinces, who combined the authority of a civil magistrate and judge, with the powers of a military commander. From these, according to the same writer, were immediately derived the *comites* of the lower ages.

Among the Franks, Germans, and other early nations, the term *comes* was applied to one who was selected by the king from his own attendants, (*e comitatu suo*), and sent to govern some city or territory, and from whom such territory, as well as the office itself, was called *comitatus*. A prominent feature of this officer was his judicial character. Spelman calls him expressly a judge, (*reges e comitatu suo miserant iudicem, — munus comitis iudicarium fuit*), and refers to the use of the word in this sense, among the ancient Germans, as early as the time of Tacitus. See *Comte*.

As to the introduction of this term into England, it may be observed that the title *comes* is found associated among the Anglo-Saxons, with some kind of territorial authority, at a period anterior to the division of the kingdom into counties, but its use does not appear to have been fully established until afterwards, when it was applied by the Latin interpreters to the *reeve*, *alderman*, or chief magistrate of the shire, as de-

noting the union in these officers of territorial jurisdiction with judicial authority. The Danes introduced the corresponding title of *eorle*, and the Normans that of *comte*, or *countee*; but the former being adopted by the Saxons, seems to have soon superseded the latter. *Comites* are mentioned in *Magna Charta*, (c. 14,) and by Bracton, as the highest order of persons in the kingdom, whose title the last named author derives *a comitatu sive a societate*, and whom he otherwise calls *consules*, (*a consulendo*), as being the king's advisers and associates in the government of the people. *Bract.* fol. 5 b. *Id.* fol. 34, 351 b. The deputy of the *comes*, (earl, or count,) was called *vice comes*, which is still the Latin appellation of sheriff, (the earl's successor in the government of the shire,) as *comes* is of earl at the present day. 1 *Bl. Com.* 116. See *Sheriff*.

**COMITAS.** Lat. *Comity*, courtesy, civility. *Comitas inter communitates*; comity between communities or nations; comity of nations. 2 *Kent's Com.* 457. That indulgence or liberality by which the laws of one nation are allowed to operate within the territories of another. See *Comity*. The rule is, that *comitas* is to be observed *quatenus sine præjudicio indulgentium fieri potest*, (as far as can be done without prejudice to those who allow it.) *Kent, C., 4 Johns. Ch. R.* 460, 477.

**COMITATUS.** L. Lat. A county or shire. So called from the *comes*, or earl, who formerly had the government of it, as county is derived from the Fr. *comte*, count, denoting the same officer. 1 *Bl. Com.* 116, 398. *Co. Litt.* 168 a. *Spelman*, voc. *Comites*. See *Comes*.

An earldom. *Bract.* fol. 84. Still so called in Latin, although an earl has no territorial authority as formerly. *Co. Litt.* 83 b. 1 *Ld. Raym.* 13.

The county court, called among the Saxons *scyre gemote*; the *mallum* or *placitum* of the early continental nations. *Magna Charta*, c. 35. *Crabb's Hist. Eng. Law*, 47, 146. Anciently a court of great dignity, and called by Spelman *forum plebeia justitie, et theatrum comitivæ potestatis*; the tribunal of common justice, and the seat of the power of the county. *Spelman*, voce. *Comites*, *Comitatus*. 3 *Bl. Com.* 36.

A train or body of companions, followers, or attendants; literally a following, or attendance; a prince's court or household. *Spelman*, *ub. sup.* In the Roman law, the retinue of the governor of a province. *Adam's Rom. Ant.* 171.

**COMITES.** [pl. of *comes*, q. v.] *Com-*

panions, attendants or followers; retainers or adherents. 1 *Bl. Com.* 254. 1 *Steph. Com.* 161. *Spelman*, voc. *Comites*. *Espit des Loix*, liv. 30, c. 16.

Earls or counts. *Magna Charta*, c. 14. *Bract.* fol. 5 b. See *Comes*.

COMITES PALEYS. L. Lat. Counts or earls palatine; those who had the government of a county palatine. *Bract.* fol. 122 b. Other copies of Bracton have *comites palentynes*. See *County Palatine*.

COMITIA. Lat. [from *coire*, quasi *co-mire*, to assemble.] In the Roman law. General assemblies of the people, convened by the constitutional authority of some magistrate, in order to enact or repeal anything by their suffrages. *P. Cyclopædia*. *Aulus Gellius*, xv. 27. *Id.* xiii. 15. *Sigonius de Ant. Jur. Civ. Rom.* i. 17. *Gruchius de Comit. Rom.* lib. iii. They were of three kinds; *curiata*, *centuriata*, and *tributa*. See *infra*.

COMITIA CURIATA. Lat. Assemblies of people instituted by Romulus, in which they voted in *curiæ*, or parishes, of which there were thirty. See *Curia*. They were assemblies of the patrician order, or at least they were so constituted that that order must have possessed a great preponderance in them. They were also termed *comitia calata*. *Aulus Gellius*, xv. 27. 1 *Kent's Com.* 518, 519, note.

COMITIA CENTURIATA. Lat. Comitia of centuries. Assemblies of the people, instituted by Servius Tullius, in which they gave their votes in centuries. These *comitia* embraced all the orders of the state, though the patricians and men of property generally exercised a controlling influence in them. *Aulus Gellius*, xv. 27. 1 *Kent's Com.* 519, and note. *Federalist*, No. 34. They were held for the election of magistrates, the making of laws, and the trial of offences against the state, and were the most important of the three kinds of *comitia*.

COMITIA TRIBUTA. Lat. Comitia of tribes. Assemblies of the Roman people, established B. C. 491, in which they voted according to tribes. From the circumstance that neither birth nor fortune gave any advantage in these *comitia* as in the others, all the people meeting on an equality, and voting *per capita*, they have been considered as assemblies of the plebeians only. 1 *Kent's Com.* 519, and note. *Aulus Gellius*, xv. 27. *Federalist*, No. 34.

COMITIA CALATA. Lat. [from O. Lat. *calare*, to call or convoke.] Comitia convened for certain religious purposes, and at which testaments were usually made. *Aul. Gell.* xv. 27. The term is usually applied to the *comitia curiata*, but Gellius applies it to the *comitia centuriata* also; the only distinction being that the former were called by a lictor, the latter by a cornicen, or trumpeter. *Id. ibid.*

COMITISSA. L. Lat. [from *comes*, an earl.] A countess; an earl's wife. *Towns. Pl.* 149. *Bract.* fol. 93 b, 219.

COMITIVA. L. Lat. [from *comes*, q. v.] In old English law. The dignity and office of a *comes*, (count or earl;) the same with what was afterwards called *comitatus*. *Spelman*.

Used in the Register in the sense of *comitatus*, a train, suite, following, attendance, or household. *Reg. Orig.* 23, 24.

COMITY. [Lat. *comitas*, q. v.] Courtesy. *Comity of nations* is the most appropriate phrase to express the true foundation and extent of the obligation of the laws of one nation within the territories of another. *Story Conf. Laws*, § 38. See 20 *Johns. R.* 263, Platt, J.

COMMANDERY, *Commandry*. [Lat. *præceptoría*.] In English law. An establishment belonging to the priory of St. John of Jerusalem, consisting usually of a manor, or chief messuage, with lands and tenements appertaining thereto, under the government of an officer called a *commander*, who received a part of the income thence arising for his own use, and accounted for the rest. *Cowell. Termes de la ley. P. Cyclopædia. Encycl. Americ.*

COMMANDITÉ, or SOCIÉTÉ EN COMMANDITÉ. Fr. In French law. A special or limited partnership, where the contract is between one or more persons who are general partners, and jointly and severally responsible, and one or more other persons who merely furnish a particular fund or capital stock, and thence are called *commandataire*, or *commandataires*, or partners *en commandité*; the business being carried on under the social name or firm of the general partners only, composed of the names of the general or complementary partners, the partners in *commandité* being liable to losses only to the extent of the funds or capital furnished by them. *Story on Partn.* § 78. *Wordsworth on Joint Stock Companies*, 2. 3 *Kent's Com.* 34.

This kind of partnership has been introduced into American law, and is authorized by statute in several of the states. *Id.* 35.

**COMMANDITAIRES.** Fr. Special partners; partners *en commandité*. See *Commandité*.

**COMMANDMENT.** [L. Fr. *commandement*; L. Lat. *præceptum*.] In practice. An act of authority, as of a magistrate or judge, in committing a person to prison.\* *Cowell*.

In criminal law. The act or offence of one who commands another to transgress the law, or do any thing contrary to law, as theft, murder, or the like. *Bract*. fol. 138, 139. *Termes de la ley*. *Stat. Westm.* 1, c. 14. Particularly applied to the act of an accessory before the fact, in inciting, procuring, setting on, or stirring up another to do the fact or act. 2 *Inst.* 182.

**COMMARCHIO.** L. Lat. A boundary or border; a common boundary. See *Marchiare*.

**COMMENDA.** L. Lat. [i. e. *ecclesia commendata, vel custodia ecclesiæ alicui commissa*; a church commended, or the care of a church committed to any one.] In English ecclesiastical law. A living or benefice *commended* by the crown to the care of a clerk, to hold till a proper pastor is provided for it; otherwise called a *commenda retinere*. 1 *Bl. Com.* 393. When a clerk is promoted to a bishopric, all his other preferments are void the instant he is consecrated. But he is sometimes allowed, by favor of the crown, to retain or hold them *in commendam*, as it is termed, from which these livings have obtained the name of *commendam*. *Id. ibid.* 3 *Steph. Com.* 87. *Termes de la ley*. *Cowell*. By the recent statute, 6 & 7 Will. IV. c. 77, s. 18, no *commendam* can in future be granted.

**COMMENDAM.** See *Commenda*.

The limited partnership (or *Société en commandité*) of the French law has been introduced into the Code of Louisiana under the title of partnership *in commendam*. *Civ. Code of Louis.* Art. 2810. 3 *Kent's Com.* 84, 35.

**COMMENDARE.** L. Lat. In old European and feudal law. To commend, commit or entrust oneself to the protection of another, (called among the Saxons *mundburde*, or *mundbyrd*.) *Spelman*. *Cowell*, voc. *Mundburde*. Mr. Spence traces this practice to the Roman law. 1 *Spence's Chancery*, 29.

**COMMENDATI.** See *Commendatus*.

**COMMENDATIO.** Lat. [from *commendare*, to commend.] Commendation, praise or recommendation. **Simplex commendatio non obligat.** Mere commendation [of an article] does not bind [the seller; does not amount to a warranty.] 2 *Kent's Com.* 485.

**COMMENDATUS.** L. Lat. [from *commendare*, q. v.] In feudal law. One who entrusts himself to the protection of another. *Spelman*. A person who, by voluntary homage, put himself under the protection of a superior lord. *Cowell*, voc. *Commendati*. His obligation in such case was to faith and obedience, (*fide et obsequio*), but without oath, or any tenure. *Spelman*. *Domesday*, cited *ibid.*

**COMMERCE.** [Lat. *commercium*, from *con*, together, and *mercari*, to trade, from *merx*, merchandise.] In a strict sense, traffic in merchandise.

In a general sense, an interchange or mutual change of goods, wares, productions or property of any kind, between nations or individuals, either by barter, or by purchase and sale. *Webster*.

*Commerce* is made by Webster and others the synonyme of *trade*, and divided into foreign and inland. A distinction, however, is frequently made between commerce and trade properly so called: the former term being used to denote intercourse with foreign nations; the latter, intercourse between citizens or subjects of the same nation. *Wharton's Lex.* *Holthouse*.

The term *commerce*, as used in the constitution of the United States, (Art. I. Sect. VIII.) has been held to comprehend navigation. 9 *Wheaton's R.* 1. And, indeed, it seems almost *ex vi termini*, to import intercourse by means of shipping. *Federalist*, No. 11. 3 *Kent's Com.* 1—21. See *Commercial law*.

**COMMERCIA BELLI.** L. Lat. In international law. War contracts. Contracts or conventions made between the subjects of two powers at war with each other; such as ransom bills, contracts made by prisoners of war for subsistence, and the like. 1 *Kent's Com.* 104, 105, 169. A truce is also a convention of this kind. *Id.* 159.

**COMMERCIAL LAW.** The law by which the commerce of nations is regulated. The word *commercial* here so far implies intercourse by sea, or by means of shipping,

as to be constantly used almost as the synonyme of *maritime*. 3 *Kent's Com.* 1—21. See *Maritime law*.

**COMMERCIUM.** Lat. Commerce, trade or traffic; dealing between one person and another; a contract. *Esse in commercio*; to be a subject of dealing, contract or acquisition. *Inst.* 3. 20, pr. 2. *Commercium jure gentium commune esse debet, et non in monopolium et privatum paucorum quæstum convertendum*; commerce by the law of nations ought to be common, and not converted into monopoly and to the private gain of a few. 3 *Inst.* 181, in marg.

**COMMINALTY,** *Comminaltie.* L. Fr. The commonalty or people. *Stat. Westm.* 1, pr. *Confirm. Chart.* c. 6, 7. 2 *Inst.* 530.

**COMMUNATORIUM.** L. Lat. [from *comminari* to threaten.] In old practice. A clause sometimes added at the end of writs, admonishing the sheriff to be faithful in executing them. *Bract.* fol. 398.

**COMMISSARY.** [L. Lat. *commissarius, officialis foraneus.*] In English ecclesiastical law. A title formerly applied to an officer who exercised spiritual jurisdiction in distant places of the bishop's diocese; being specially ordained for the purpose of supplying the bishop's jurisdiction and office in the outplaces of his diocese, or else in such places as were peculiar to the bishop, and exempted from the jurisdiction of the archdeacon. *Termes de la ley.* Cowell. *Lyndewode Provinc.* cap. 1.

**COMMISSION.** [Lat. *commissio*, from *committere*, to commit or entrust.] In practice. A warrant or authority in writing and under seal, sometimes in the form of letters patent, empowering those to whom it is directed, to perform certain acts, or to exercise a certain jurisdiction.\* *Termes de la ley.* It is for the most part the same as the *delegatio* of the civilians. Cowell. See old forms of commissions, *Reg. Orig.* 64, 88, 128, 138. *Reg. Jud.* Appendix, 19. In England, the judges of the superior courts sit upon their circuits, by virtue of commissions. 1 *Tidd's Pr.* 41. And justices of the peace are always appointed by commission. See *infra*.

The individuals themselves, who act by virtue of such an authority.\*

A writ issued out of some court under its seal, authorizing the persons named in it to perform certain specified duties, as to

take the testimony of witnesses, &c.\* See *Commission to take Testimony*.

The compensation allowed an agent for his services. *Story on Agency*, § 326.

**TO COMMISSION.** To authorize or empower by virtue of a written warrant, authority or commission; to appoint with such authority.\* The emphatic word in the old commissions is *constituimus*, (we have constituted,) or *assignavimus*, (we have assigned.) *Bract.* fol. 109, 110. *Reg. Orig.* 64, 88, 128. *Reg. Jud.* Appendix, 19.

**COMMISSION OF ASSIZE.** In English law. One of the five several authorities, by virtue of which, until recently, the judges of the superior courts sat upon their circuits. 3 *Bl. Com.* 58. It was a commission directed to the justices and serjeants therein named, to take (together with their associates) *assizes* in the several counties; that is, to take the verdict of a peculiar species of jury called an *assise*, and summoned for the trial of landed disputes. *Id.* 59. 1 *Tidd's Pr.* 41. 2 *Reeves' Hist. Eng. Law*, 428. See *Assise*. The recent abolition of assises and other real actions in England, has thrown this commission out of force; and it is accordingly omitted by Mr. Stephen in enumerating the commissions of the judges. 3 *Steph. Com.* 424, note (x).

**COMMISSION OF BANKRUPT.** A commission or authority formerly granted by the Lord Chancellor, in cases of bankruptcy, to such persons, (usually five,) as he should think proper, (who were thence styled commissioners of bankrupt,) authorizing them to proceed according to the statute against bankrupts. Instead of a commission, a *fiat* now issues by virtue of 1 & 2 Will. IV. c. 56, § 12; the commissioners constituting a permanent court. 2 *Steph. Com.* 199. See *Commissioners of bankrupt*.

**COMMISSION TO EXAMINE WITNESSES.** In practice. A commission issued out of, and under the seal of the court in which an action is pending, to obtain the testimony of persons not residing within the jurisdiction of the court, and whose personal attendance cannot be compelled by subpoena. It is directed to one or more individuals residing at the same place with the witnesses, authorizing them to take their testimony in writing and return it under seal, and in accordance with certain prescribed formalities, to the court which issued it. 2 *Tidd's Pr.* 810, 811.

In England a commission is also sometimes issued to take the testimony of witnesses within the jurisdiction of the court, as where a witness is going abroad, &c. *Id. ibid.*

**COMMISSION OF LUNACY**, (otherwise called a Commission DE LUNATICO INQUIRENDO.) In equity practice. A commission issuing out of chancery, authorizing certain persons to *inquire* whether a person represented to be a *lunatic*, be so or not; in order that, if he or she be found a lunatic, their person or estate may be properly taken care of. 1 *Bl. Com.* 305. See old form of commission, *Reg. Jud.* Appendix, 19. This is usually done by committing the care of it to some suitable persons, called the *lunatic's committee*. 1 *Bl. Com. ub. sup.* 2 *Steph. Com.* 531. *Stock on Non Compos Mentis*, 86—128. [2] *N. Y. Rev. St.* [52]. 1 *Id.* 813.

**COMMISSION OF NISI PRIUS**. In English law. One of the five [now four] commissions by virtue of which the judges of the superior courts sit upon their circuits. It is a consequence of the [ancient] commission of assise (*supra*); being annexed to the offices of the justices by the statute of Westminster 2, c. 30, and it empowers them to try all questions of fact issuing out of the courts of Westminster, that are then ripe for trial by jury. 3 *Bl. Com.* 58, 59. 3 *Steph. Com.* 424.

**COMMISSION OF THE PEACE**. In English law. A commission from the crown, appointing certain persons therein named, jointly and severally to keep the *peace*, &c. Justices of the peace are always appointed by special commission under the great seal, the form of which was settled by all the judges, A. D. 1590, and continues with little alteration to this day. 1 *Bl. Com.* 351. 3 *Steph. Com.* 39, 40.

**COMMISSION OF REBELLION**, (sometimes called a *writ of rebellion*.) In equity practice. A process formerly used in the court of chancery in England, being one in the series of what was called *process of contempt*. Where a defendant was in contempt, the order of this process was, 1. attachment; 2. attachment with proclamations; 3. commission of rebellion; 4. sending a sergeant-at-arms; and 5. sequestration. 3 *Bl. Com.* 443, 444. See *Contempt*. The commission of rebellion issued on the attachment with proclamations being returned *non est inventus*, and was directed to four commissioners, authorizing them to attach the party as a rebel and contemner

of the laws, (*tanquam rebellis et legis nostræ contemptor*.) wherever he might be found in the kingdom, and bring, or cause him to be brought before the court on a day assigned. *Id. ibid. Termes de la ley. Reg. Jud.* Appendix, 47. This process has, by order of 26 August, 1841, r. 6, been dispensed with. 4 *Steph. Com.* 20, note (d).

**COMMISSION OF REVIEW**. In English ecclesiastical law. A commission formerly sometimes granted in extraordinary cases, to revise the sentence of the court of delegates. 3 *Bl. Com.* 67. Now out of use, the privy counsel being substituted for the court of delegates, as the great court of appeal in all ecclesiastical causes. *Stat.* 2 & 3 *Will.* IV. c. 92. 3 & 4 *Will.* IV. c. 41, s. 3. 6 & 7 *Vict.* c. 38. 3 *Steph. Com.* 432.

**COMMISSION OF SEQUESTRATION**. See *Sequestration*.

**COMMISSION OF SEWERS**. In English law. A commission under the great seal, constituting the persons to whom it is directed a court of special jurisdiction under the name of *commissioners of sewers*, (q. v.) 3 *Bl. Com.* 73.

**COMMISSIONER**. [L. Lat. *commissarius*.] A person holding a commission for the discharge of certain duties, as the execution of a public office.\* *Cowell*. See *Commission*. A person holding a commission to take affidavits or depositions and the acknowledgments of deeds, is frequently simply termed a *commissioner*.

A person to whom a commission is directed, authorizing the performance of certain specific acts, as the examination of witnesses.\* *Jacob*.

**COMMISSIONERS OF SEWERS**. In English law. Commissioners appointed under the great seal, and constituting a court of special jurisdiction; which is to overlook the repairs of the banks and walls of the seacoast and navigable rivers, or, with consent of a certain proportion of the owners and occupiers, to make new ones; and to cleanse such rivers, and the streams communicating therewith. *Stat.* 3 & 4 *Will.* IV. c. 22, s. 10. 3 *Steph. Com.* 442, and note (r). *Crabb's Hist. Eng. Law*, 469. The word *sewer* is used in this phrase in the sense of a trench, ditch or channel for draining marshy lands, and carrying water into the sea, as well as in that of a natural watercourse. See *Sewer*.

Commissioners of sewers have sometimes

been appointed in the United States, to remove obstructions and regulate the flow of water in creeks and rivers. See 7 *Pick. R.* 207.

**COMMISSIONERS OF BANKRUPT.** In English law. Commissioners appointed under the great seal, and whose duties are, to take proof of the petitioning creditor's debt, the trading and act of bankruptcy, to examine the bankrupt in all matters relating to his trade and effects, assign his property to assignees, and to perform various other important duties connected with bankruptcy matters. 2 *Bl. Com.* 480—486. *Eden's Bankrupt Law*, 79, and *passim*.

These commissioners now compose permanent courts of bankruptcy. *Stat.* 1 & 2 *Will.* IV. c. 56; 5 & 6 *Will.* IV. c. 29, s. 21; 5 & 6 *Vict.* c. 122. 2 *Steph. Com.* 199, 200. 3 *Id.* 425, 426.

**COMMIT.** [L. Fr. *comaunder*.] In practice. To send a person to prison for any crime or contempt.\* 4 *Bl. Com.* 295, 300. 1 *Tidd's Pr.* 479, 481.

To deliver a defendant to the custody of the sheriff or marshal, on his surrender by his bail. 1 *Tidd's Pr.* 285, 287.

**COMMITMENT.** In practice. The sending or committing a person to prison or gaol, by warrant or order, either for a crime, contempt, or contumacy.\* 4 *Bl. Com.* 296, 300. 3 *Steph. Com.* 364, 367.

The delivery of a defendant to the custody of a sheriff or marshal, on his surrender by his bail. 1 *Tidd's Pr.* 286, 289. See *Committitur*.

A part of the process of charging a defendant in execution. *Id.* 364, 365.

The warrant or order by which a party is committed.\* Sometimes termed a *mitimus*. See *U. S. Digest*, and *Supplement*, Commitment.

**COMMITTEE.** In practice. One or more individuals to whom the consideration or management of any matter is committed or referred by some court, or by consent of parties to whom it belongs.\* *Termes de la ley.* *Cowell*. The committee of a lunatic, idiot, &c., is the person to whom the care and custody of the person or estate of such lunatic is committed by the court of chancery. 1 *Bl. Com.* 305.

**COMMITTITUR.** Lat. (He is committed—from *committere*, to commit.) In practice. An order or minute, setting forth that the person named in it is committed to the custody of the sheriff. Most commonly

used on the surrender of a defendant by his bail, in which cases it is a minute of the render and commitment. 1 *Tidd's Pr.* 285.

**COMMITTITUR PIECE.** In English practice. An instrument in the form of a bail-piece, by which a defendant already in custody is charged in execution, at the suit of the same or another plaintiff. 1 *Tidd's Pr.* 363, 364.

**COMMIXTIO.** Lat. [from *commisceri*, to mix together.] In the civil law. Commixture; a mixing together of things solid or dry, (as *confusio* is of things liquid,) which belong to different owners. *Inst.* 2. 1. 28. 27. 1 *Mackeldey's Civ. Law*, 285, § 270. One of the modes of acquiring property in goods. See *Confusio*.

**COMMODATE.** In Scotch law. A gratuitous loan for use. *Ersk. Inst.* b. 3, tit. 1, § 20. Closely formed from the Lat. *commodatum*, (q. v.)

**COMMODATOR.** Lat. [from *commodare*, to lend.] In the civil law. A, or the lender, as distinguished from him to whom a thing is loaned, (*cui commodata res est*.) *Inst.* 4. 1. 16.

**COMMODATUM.** Lat. [from *commodare*, to lend.] A thing loaned, (*res commodata*.) *Bract.* fol. 99 b.

The contract by, or upon which a thing is loaned; a loan for use without pay. A bailment of a thing, or of goods, to be used by the bailee for his own benefit, (*ad commodum*,) temporarily, or for a certain time, without reward, (*nulla mercede accepta vel constituta*,) and then to be identically returned to the lender.\* *Inst.* 3. 15. 2. *Dig.* 13. 6. *Bract.* fol. 99 b. 2 *Kent's Com.* 573, 574. *Story on Bailment*, § 6. Called in Scotch law, *commodate*; a term which Mr. Justice Story regrets has not been introduced into the English law of bailment. *Ersk. Inst.* b. 3, tit. 1, § 20. 1 *Bell's Com.* [197] 225. *Story on Bailm.* § 221.

**COMMODATI ACTIO.** Lat. In the civil law. An action of loan; an action for a thing lent. An action given for the recovery of a thing loaned (*commodatum*) and not returned to the lender. *Inst.* 3. 15. 2. *Id.* 4. 1. 16.

**COMMODUM.** Lat. Advantage, benefit or profit. *Commodum ex injuria sua nemo habere debet*. No man ought to have advantage [to derive benefit] from his own wrong. *Jenk. Cent.* 161.

*Cujus est commodum ejus debet esse incommodum.* Whose the advantage is, his ought the disadvantage to be. He who has the benefit of a thing ought also to be subject to the disadvantage of it. 1 *Kames' Equity*, 289. This maxim is more frequently expressed in the hexameter line,

*Qui sentit commodum, sentire debet et onus.*

*Secundum naturam est commoda cujusque rei cum sequi quem sequuntur incommoda.*

It is according to nature that the advantages of a thing should follow him who is to be subject to its disadvantages. *Dig.* 50. 17. 10. This maxim of the civil law embodies the converse of the preceding, and is applied by Bracton in the following passage. *Ipsium sequi debent commoda quem sequuntur incommoda, et commodum ejus esse debet cuius est periculum*; the advantages [attending a sale before delivery] ought to attach to him who is subject to the disadvantages; and the benefit [arising from an accidental increase of value during that interval] ought to be his who takes the risk [of loss during the same interval.] *Bract.* fol. 62.

**COMMON.** [Lat. *communis*.] Bracton distinguishes between common and public. *Publica ita accipiuntur quæ sunt omnium populorum, i. quæ spectant ad usum hominum tantum. Communia vero dici poterunt aliquando quæ sunt omnium animantium. Public* things are understood to mean those which belong to all people, that is, with reference to the use of *men* only. *Common* things may be defined to be those which belong to all living creatures. *Bract.* fol. 8.

**COMMON.** [L. Fr. *comon, comen, comun*; L. Lat. *communis*, q. v.] A profit which a man hath in the land of another; as to feed his beasts, to catch fish, to dig turf, to cut wood, or the like. 2 *Bl. Com.* 32. 2 *Steph. Com.* 3.—A right or privilege which one or more persons claim, to take or use some part of that which another man's lands, waters, woods, &c., naturally produce, without having an absolute property in such lands, waters, woods, &c. 1 *Crabb's Real Prop.* 257, 258, § 268.—A privilege which a man may enjoy of taking a profit, in *common* with many, in the land of another, as to feed his beasts, &c. *Roscoe's Real Act.* 366.—A right of taking a profit in the land of another, in *common* either with the owner or with other persons.\* The radical meaning of the term *common*, in all its applications, is—something enjoyed by *more than one* person; properly, by *many* together. *Co. Litt.* 122 a. *Savage, C. J.*, 10 *Wendell's R.* 639, 647.

Common, in English law, is an incorporeal right which lies in grant, originally commencing on some agreement between lords and tenants, which by time has been formed into prescription, and continues good, although there be no deed or instrument to prove the original contract. 4 *Co.* 37. 1 *Crabb's Real Prop.* 258, § 268. It is chiefly of four sorts; common of *pasture*, of *piscary*, of *turbary*, and of *estovers*, (qq. v.) It is little known or used in this country, and probably does not exist in any of the northern or western parts of the United States which have been settled since the revolution. 3 *Ken's Com.* 404. The term, however, is frequently used to denote a space or tract of ground in a town or other municipal district, set apart for the public use of the inhabitants. 2 *Hilliard's Real Prop.* 77. See *U. S. Digest and Supplement*, Common.

As to the etymology of the word, the Lat. *communis* is derived by Bracton from *cum*, with, and *una*, together, or by transposition, from *una*, and *cum*, the word *alio* (another) or *aliis* (others) being understood. *Bract.* fol. 208, 222. Whatever may be said of the correctness of this derivation, it serves to show with great force the original meaning of the term, as deriving its name from the *community* of interest which arises between the claimant of the right and the owner of the soil, or between the claimant and other commoners entitled to the same right. 2 *Steph. Com.* 3. Lord Coke says it is so called because it is *common* to many. *Co. Litt.* 122 a. Cowell applies the term to the land or water itself of which the use is common to this or that town, &c. And hence, no doubt, the popular meaning of common, as a waste or unenclosed ground; that having been the kind of ground originally subject to the right. 2 *Steph. Com.* 4.

**COMMON OF PASTURE.** [L. Lat. *communis pasturæ*; L. Fr. *commune de pasture*.] The right of feeding one's beasts on another's land, in common with the owner, or with other persons.\* 2 *Bl. Com.* 32. 2 *Steph. Com.* 4. *Savage, C. J.*, 10 *Wendell's R.* 647. It is of four sorts, *appendant*, *appurtenant*, *because of vicinage*, and *in gross*. 2 *Bl. Com.* 32. *Co. Litt.* 122 a.

**COMMON APPENDANT.** [L. Lat. *communis pertinens*.] A right annexed to the possession of arable land, by which the owner is entitled to feed his beasts on the lands of another, usually of the owner of the manor of which the lands entitled to common are a part. *Savage, C. J.*, 10

*Wendell's R.* 648. 2 *Bl. Com.* 33. *Co. Litt.* 122 a. 1 *Crabb's Real Prop.* 258, § 269. This kind of common arises from the connexion of tenure, and is of common right; it must have existed from time immemorial and cannot now be created; it is regularly appendant to arable land only, and can be claimed for no beasts but such as are commonable, that is, beasts of the plough, such as horses or oxen, or such as manure the ground, as kine or sheep. 2 *Bl. Com.* 33. *Co. Litt.* 122 a. 4 *Co.* 37. 1 *Crabb's Real Prop.* 258—264, §§ 268—276. *Roscoe's Real Act.* 367. 3 *Kent's Com.* 404. Savage, C. J., 10 *Wendell's R.* 648.

**COMMON APPURTENANT.** A right of feeding one's beasts on the land of another, [in common with the owner or with others,] which is founded on a grant, or a prescription which supposes a grant. 1 *Crabb's Real Prop.* 264, § 277. This kind of common arises from no connexion of tenure, and is against common right; it may commence by grant within time of memory, or, in other words, may be created at the present day; it may be claimed as annexed to any kind of land, and may be claimed for beasts not commonable, as well as those that are. 2 *Bl. Com.* 33. *Co. Litt.* 121 b, 122 a. 4 *Co.* 37, 38. *Cro. Car.* 482. 1 *Crabb's Real Prop.* 254—268, §§ 277—283. *Roscoe's Real Act.* 368. 3 *Kent's Com.* 404. Savage, C. J., 10 *Wendell's R.* 648.

**COMMON BECAUSE OF VICINAGE, OR NEIGHBORHOOD.** [L. Fr. *comon pur cause de vicinage*; L. Lat. *communia ex causa vicinitatis*.] Is where the inhabitants of two townships which lie contiguous to each other have usually intercommoned with one another, the beasts of the one straying mutually into the other's fields, without any molestation from either. This is, indeed, only a permissive right, intended to excuse what, in strictness, is a trespass in both, and to prevent a multiplicity of suits, and therefore either township may enclose and bar out the other, though they have intercommoned time out of mind. 2 *Bl. Com.* 33. *Co. Litt.* 122 a. *Bract.* fol. 222. This kind of common can be only for cattle *levant et couchant* upon the lands to which it is annexed, (7 *Co.* 5; but see 5 *Taunt.* 244;) and it must be used with commonable cattle. 7 *Co.* 5. 1 *Crabb's Real Prop.* 271—273, §§ 290—292. *Roscoe's Real Act.* 369.

Dr. Wooddesson observes that Blackstone's account of common *pur cause de vicinage* is not properly a definition, but rather

a descriptive example or illustration, there being other occasions when the excuse for trespass may be used. 2 *Wooddes. Lect.* 50.

**COMMON OF SHACK.** A species of common by vicinage prevailing in the counties of Norfolk, Lincoln and Yorkshire, in England; being the right of persons occupying lands lying together in the same common field, to turn out their cattle after harvest to feed promiscuously in that field. 2 *Steph. Com.* 6. 7 *Co.* 5, 65. 1 *B. & Ald.* 710. 1 *Crabb's Real Prop.* 273, § 293.

**COMMON IN GROSS, OR AT LARGE.** A species of common which is neither appendant nor appurtenant to land, but is annexed to a man's person, being granted to him and his heirs by deed; or it may be claimed by prescriptive right, as by a parson of a church or the like corporation sole. 2 *Bl. Com.* 34. It is a separate inheritance, entirely distinct from any other landed property, vested in the person to whom the common right belongs. 2 *Steph. Com.* 6. 1 *Crabb's Real Prop.* 268, § 284. *Roscoe's Real Act.* 369.

**COMMON SANS NOMBRE.** L. Fr. [L. Lat. *communia sine numero*.] Common without number; that is, without limit as to the number of cattle which may be turned on; otherwise called, common *without stint*. *Bract.* fol. 53 b, 222 b. 2 *Steph. Com.* 6, 7. 2 *Bl. Com.* 34. 3 *Id.* 238, 239. 2 *Wils.* 274. 2 *Wooddes. Lect.* 49.

It has been denied in some of the cases in England, that this kind of common can now exist. *Willes*, 232. 1 *Saund.* 346. The better opinion seems, however, to be, that it may exist as a species of common in gross, if granted to an individual, but that a corporation cannot prescribe for it. This is the opinion of Mr. Crabb and Mr. Stephen. 1 *Crabb's Real Prop.* 269, 270, § 287. 2 *Steph. Com.* 7, and note (b). Dr. Wooddesson remarks upon the phrase *common without stint* as loosely used by Blackstone. 2 *Bl. Com.* 34. 2 *Wooddes. Lect.* 49. It is, however, more clearly explained by the same author in another place. 3 *Bl. Com.* 238, 239.

**COMMON OF PISCARY, or FISHERY.** [L. Lat. *communia piscaria*.] The right or liberty of fishing in another man's water, [in common with the owner or with other persons.] 2 *Bl. Com.* 34. 1 *Crabb's Real Prop.* 280, § 304. *Schultes' Aquatic Rights*, 25.—A liberty or right of fishing in the water covering the soil of another person, or in a river running through another's land. 3 *Kent's Com.* 409. It is quite different



from a common fishery, (*communis piscaria*), with which, however, it is frequently confounded by the text writers. 8 *Taunt.* 183. *Schultes' Aquatic Rights*, 60, *et seq.* See *Common Fishery*.

**COMMON OF TURBARY.** [L. Lat. *communio turbaria*.] A liberty of digging turf upon another man's ground, [in common with the owner, or with other persons.] 2 *Chitty's Bl. Com.* 34, and note. *Co. Litt.* 122. 2 *Steph. Com.* 9. It may be either by grant or prescription, and may be either appurtenant or in gross, but it is usually claimed as appurtenant and by prescription. *Id. ibid.* 9, 10. It cannot, however, be claimed as appurtenant to land, but only to a house. 4 *Co.* 37 a. And it authorizes not the taking of turf except for the purpose of using it as fuel in the particular house to which the right is annexed. *Noy*, 145. 2 *Steph. Com.* 10. 1 *Crabb's Real Prop.* 278, § 300, *et seq.* See *Turbary*.

**COMMON OF ESTOVERS.** A liberty of taking necessary wood for the use or furniture of a house or farm from off another's estate, [in common with the owner or with others.] 2 *Bl. Com.* 35. It may be claimed, like common of pasture, either by grant or prescription. 2 *Steph. Com.* 10. 1 *Crabb's Real Prop.* 274, § 29, *et seq.* 3 *Kent's Com.* 404. 10 *Wendell's R.* 639.

This right is not to be confounded (although it sometimes is) with the right of a tenant or lessee to take estovers from off the land let or demised to him. 2 *Steph. Com.* 10. 2 *Chitty's Bl. Com.* 35, note. See *Estovers*.

**COMMON ASSURANCES.** The several modes or instruments of conveyance established or authorized by the law of England. Called *common*, because thereby every man's estate is assured to him. 2 *Bl. Com.* 294. See *Assurance*. Sheppard's celebrated treatise on the law of conveyances is called the "Touchstone of common assurances."

**COMMON BAIL.** See *Bail, Common*.

**COMMON BAR.** See *Blank bar*.

**COMMON BARRETOR.** See *Barretor*.

**COMMON BENCH.** [L. Lat. *communis bancus*; L. Fr. *le commun banke*.] The former title of the English court of Common Pleas, and still sometimes used in the reports. Its original title seems to have been simply "The Bench;" the epithet "*common*" being added probably to distin-

guish it from the King's or Queen's Bench, as being originally established for the trial of *common* causes, (*communio placita*), or controversies between *common* persons, that is, between subject and subject. 1 *Reeves' Hist. Eng. Law*, 57, 58. 3 *Bl. Com.* 37—40. *Camd. Brit.* 113. 8 *Co. pref.* See *Bench, Bancus, Common Pleas, Court of*.

**COMMON CARRIER.** A person who carries the goods of others for hire. One who undertakes for hire, to carry for any who choose to employ him. 1 *Smith's Leading Cases*, (Am. ed.) 104. 4 *N. Hamp. R.* 304. 1 *Pick. R.* 50. Common carriers are of two kinds; by *land*, as owners of stages, stage wagons, rail-road cars, teamsters, cartmen, draymen and porters; and by *water*, as owners of ships, steam-boats, barges, ferrymen, lightermen, and canal boatmen. 2 *Kent's Com.* 589, *et seq.* 1 *Smith's L. Cas. ub. sup.*

The term *common*, as applied to a carrier, would seem, *ex vi termini*, to imply the carrying to be a *common* or public employment, or one undertaken as a *business*, in contradistinction to carrying on a particular occasion, or for particular persons. *Story on Bailm.* § 495. See 2 *Kelly's (Geo.) R.* 349. The rule of law, however, seems to be settled, that *any one* who undertakes, though only *pro hac vice*, to carry for hire, without a special contract, assumes the character and thereby incurs the responsibility of a common carrier. 1 *Smith's Lead. Cas.* 104. 1 *Watts' & Serg. R.* 285, there cited. 2 *Kent's Com.* 597, and note.

**COMMON COUNCIL.** [L. Lat. *commune concilium*.] The representative body of a corporation, in which is vested the power of making its laws and administering its affairs.\* According to Lord Holt, a common council is incident to all corporations of common right, unless it be otherwise provided by the patent of creation. 1 *Ld. Raym.* 226. One of the ancient names of the English parliament was "the common council of the realm," (*commune concilium regni*.) 1 *Bl. Com.* 148.

**COMMON COUNTS.** In pleading. Counts of invariable form, framed upon certain general principles of statement, and therefore *common* in their application to a great variety of actions; as distinguished from *special* counts, which are adapted to the special circumstances of each particular case, and are peculiar to the individual actions in which they are employed.\* In other words, they are general forms of pecuniary

demand, founded on express or implied promises, to pay money in consideration of a precedent or existing debt. 1 *Chitt. Pl.* 873. Their principal use is to sustain the plaintiff on the trial of a cause, in the event of a failure to prove his case as stated in the special counts of his declaration. *Steph. Pl.* 287, (Am. ed. 1824.) 1 *Burr. Pr.* 130, note. They are most frequently employed in claims for goods sold, work done, money lent, money paid, money had and received, and money due on an account stated, (which last are commonly called the *money counts*,) and sometimes without any special counts. See *Indebitatus assumpsit*, *Quantum meruit*, *Quantum valebant*, *Insimul computassent*. In England, since the Pleading Rules of Hil. T. 2 Will. IV., the importance of these counts has been considerably diminished, and in some cases they can no longer be resorted to. 1 *Chitt. Pl.* 339—359. (Perkins' ed. 1847.)

**COMMON DAY.** [L. Lat. *dies communis*.] In old English practice. An ordinary day in court. *Stat. 13 Ric. II.* st. 1, c. 17. Such as *Octabis Michaelis*, (the octave of St. Michael,) *Quindena Pasche*, (the Quinzime of Easter,) &c. *Stat. 51 Hen. III.* st. 2 & 3. *Cowell. Termes de la ley.* See *Dies communis*.

**COMMON FINE.** [L. Lat. *finis communis*.] In old English law. A certain sum of money which the residents in a leet paid to the lord of the leet, otherwise called head silver, cert money, (q. v.) or *certum leia*. *Termes de la ley. Cowell.*—A sum of money paid by the inhabitants of a manor to their lord, towards the charge of holding a court leet. *Bailey's Dict.* See *Leet*.

A fine or amercement imposed upon a county at large. *Bract. fol. 36 b. Stat. Westm. 1,* c. 18. 2 *Inst.* 197.

**COMMON FISHERY.** [L. Lat. *communis piscaria*.] A right of fishing common to all, as a fishery in the sea, or in a navigable river. 1 *Crabb's Real Prop.* 114, § 108. This is sometimes confounded with *common of fishery*, and *free fishery*, from both of which, however, it is clearly distinguishable. *Id. ibid.* 3 *Kent's Com.* 409—411. See *Common of Fishery*, *Fishery*, *Free Fishery*.

**COMMON INFORMER.** One who habitually gives, or makes a business of giving information of the violation of any penal statute, with a view to the prosecution of the offender, and to whom the whole or a

part of the forfeiture is given.\* 3 *Bl. Com.* 160. *Crabb's Hist. Eng. Law*, 509. See *Informer*.

**COMMON INTENDMENT.** Common meaning or understanding; the understanding of a thing according to the subject matter, without straining it to any extraordinary or foreign sense. *Co. Litt.* 78, 303. *Termes de la ley. Cowell. Blount.* See *Intendment*.

**COMMON JURY.** In practice. The ordinary kind of jury by which issues of fact are generally tried, as distinguished from a *special jury*, (q. v.)

**COMMON LAW.** [L. Lat. *Lex communis*, *Jus commune*; L. Fr. *comen ley*, *comon droit*.] The whole body of the law of England, as distinguished from the civil and canon laws; called also *Lex Anglia* and *Lex terræ*, to distinguish it from systems of foreign origin. *Termes de la ley.* 1 *Wooddes. Lect. Introd.* lxxxi. In this sense, it comprehends statute law, (*Co. Litt.* 115 b,) and is termed by Spelman *jus civile Anglorum*, (the civil law of the English.) *Spelman*, voc. *Jus commune*. See *Civil law*. Lord Coke calls *Magna Charta*, the *Charta de Foresta*, the ancient statutes of Merton, Marlbridge, Westminster the first, *De bigamis*, Gloucester, Westminster the second, *Articuli super chartas*, *Articuli cleri*, the statute of York, *Prærogativa Regis*, and some few others, together with the original writs in the Register, "the very body, and, as it were, the very text of the common law of England," of which the year books and records are but commentaries and expositions. 8 *Co. pref.*

That branch of the law of England which does not owe its origin to parliamentary enactment; otherwise called, with reference to its origin, *lex non scripta*, (the unwritten law,) as distinguished from statute law, or the *lex scripta*: being a collection of customs, rules and maxims, which have acquired the force of law by immemorial usage, recognized and declared by judicial decisions, and the best evidence of which is to be found in the reports of such decisions, and in the standard treatises and abridgments.\* 1 *Bl. Com.* 67—73. 1 *Steph. Com.* 10, 45, 49, 52. 1 *Wooddes. Lect. Introd.* lxxxi. See *Lex non scripta*.

The general customs of the kingdom, as distinguished from the local customs of particular places. 1 *Bl. Com.* 67, 74. 1 *Wooddes. Lect. ub. sup.*

That system of law which is administered in the common law courts, as distinguished from the rules prevailing in courts of equity and admiralty. 1 *Wooddes. Lect. ibid.*

In American jurisprudence, the term "*common law*" is chiefly used in the second and last of the foregoing senses; that is, in contradistinction, on the one hand, to the statute law, and on the other, to equity and admiralty and maritime jurisprudence. Story, J., 6 *Peters' R.* 102, 110. 1 *Kent's Com.* 471. Story, J., 3 *Peters' R.* 446, 447. It is, however, occasionally used to denote statute law also, as where it is said that the English statutes passed before the emigration of our ancestors, being applicable to our situation, and in amendment of the law, constitute a part of our common law. Story, J., 5 *Peters' R.* 232, 241.

The common law is the common jurisprudence of the people of the United States, and was brought with them as colonists from England, and established here, so far as it was adapted to our institutions and circumstances. 1 *Kent's Com.* 342, 343. Story, J., 2 *Peters' R.* 137, 144. To that extent it has been recognized and adopted as one entire system by the constitutions of some of the states; and it has been assumed by the courts, or declared by statute, with the like modifications, as the law of the land in every state. 1 *Kent's Com.* 472. Thus it is said that in the absence of all proof to the contrary, the English common law, when consistent with our institutions, will be presumed to be the rule of decision in a sister state. 6 *Alabama R.* 631. 4 *Blackf. R.* 89. But to what extent the common law has been adopted in the *federal* jurisprudence of the United States, does not seem to be settled. It has indeed been expressly held, that there can be no common law of the United States, and that the common law of England is not in force in the United States as a federal government. McLean, J., 8 *Peters' R.* 658. Blackford, J., 1 *Blackf. R.* 205. According to other authority, the constitution and laws of the United States are predicated upon the existence of the common law, and that law is appealed to by the constitution for the construction and interpretation of its powers. Story, J., 1 *Gallison's R.* 488, 489, 520. See 3 *Wheaton's R.* 223. 1 *Gallison's R.* 20. 1 *Kent's Com.* 338, 339. *U. S. Digest and Supplement*, Common Law.

The Lat. *jus commune*, (q. v.) is to be found in the civil law, but the term "*Common law*," is generally agreed to be of English origin, being by some writers supposed to be a translation of the Saxon *folcright*, or *folcrihte*, (q. v.) mentioned in the laws of King Edward the Elder, expressing the same *equal right*, law or justice due to persons of *all* degrees. 1 *Wooddes.*

*Lect. lxxxii. Lambard, apud Spelman, voc. Jus Commune.* 1 *Bl. Com.* 65, 67. Lord Mansfield, C. J., 4 *Burr.* 2343. Spelman, however, considers it as applied for the first time to that body of laws compiled by King Edward the Confessor, (or St. Edward as he is otherwise styled,) from the three systems which had previously prevailed in different districts of England, viz. the Mercen lage, West Saxon lage, and Dane lage; denoting by way of distinction from these, a *law common to all the realm*. Spelman, voc. *Lex Anglorum. Ranulph. Cestriens.* lib. 1, c. 50, cited *ibid.* 1 *Bl. Com.* 67. Lord Coke observes that the common law is sometimes called *right*, (as in *Magna Charta*,) sometimes *common right*, and sometimes *common justice*. *Co. Litt.* 142 a.

The term *Common law* has also been applied to the judicial systems of other nations, such as the Lombards and the Romans of the lower ages. Spelman, voc. *Jus commune*. The *land's lagh* of Sweden has been considered of nearly equivalent meaning. 1 *Bl. Com.* 66. The term *common law* is used in Germany to denote the subsidiary law common to the several German states, in opposition to the laws of the individual states. Its constituent parts are the German law, the Roman law, the Canon law, and the Lombard feudal law. 1 *Mackeld. Civ. Law*, 83, § 94, Kaufmann's note.

As to the origin of the common law itself, various opinions have been entertained by the best writers. Sir William Blackstone, following Lord Coke and Sir Matthew Hale, treats it as being essentially of Saxon origin, its ultimate sources having existed (though not now distinguishable,) in the various local customs and usages which prevailed among the aboriginal Britons, or were introduced by the invading Romans, Saxons and Danes, while they successively bore sway or maintained a footing on the island. 1 *Bl. Com.* 64—67. Mr. Stephen is of opinion that the ancient law of Normandy has a claim to be considered another parent of the common law, and one from which it has inherited some of its most remarkable features. 1 *Steph. Com.* 44. Mr. Hallam inclines to ascribe the present common law to a date not much antecedent to the publication of Glanville, though he admits some features of it to have been distinguishable in Saxon times. 2 *Hallam's Mid. Ages*, 466—468. Mr. Spence descends still lower, and fixes the origin of the common law about the period of the composition of the works of Glanville and Bracton, and the treatises of Britton, Fleta and Thornton, founded upon them, strongly

advocating the opinion that it was made up, to a very great extent, of materials derived from the *Roman law*. 1 *Spence's Chancery*, 119—127. A principal argument relied on in support of this view, is the peculiar character of the important work of Bracton; Mr. Spence contending not only that that writer borrowed more largely from the *Corpus Juris* than his direct references appear to indicate, but also that what he did adopt was used not for the mere purpose of illustration, but because it was considered to be *the law of the time*. *Id.* 123—127, 132. This whole view, however, together with the arguments in its support seems to have been long since met and refuted by Selden. *Diss. ad Fletam*, ch. 7, sect. 7. *Id.* ch. 8, sect. 1. *Id.* ch. 9, sect. 1. Indeed, the observation of Bracton himself, on the first page of his work, that the law of England, which he proposed to illustrate, was an *unwritten law*, composed, in a great degree, of *customs which differed in different places*, while it tends to support the opinion of Blackstone and the older writers before alluded to, seems wholly at variance with Mr. Spence's idea that the old local and customary laws had then been abrogated, and a new system introduced. 1 *Spence's Chancery*, 125, 122. As an evidence of the extent to which the last named writer has carried his theory, it may be observed that among the doctrines and regulations of the common law referred by him to a Roman original, are the doctrine of entails, the modes of conveyance by fine and recovery, the formality of livery of seisin, the proceeding by inquest of office, the terms and vacations of the courts, imparlances and essoins in actions, several of the old real actions, together with much of the system of special pleading; and even the feudal system is traced to the Roman relation of patron and client. *Id.* 21, 36, 139, 142, 143, 178, 225, 229, 235, 280, note (e).

**COMMON NUISANCE.** [L. Lat. *commune nocumentum*.] A nuisance affecting the public, being an annoyance to the whole community in general; as distinguished from a private nuisance, which is confined in its effects to particular individuals.\* 3 *Bl. Com.* 215. *Id.* 5. 4 *Id.* 167. 4 *Steph. Com.* 294. The obstructing of highways, bridges and public rivers, and the carrying on of offensive or dangerous trades or manufactures, are examples of common nuisances. See *Nuisance*.

**COMMON PLACE.** Common pleas. The English court of common pleas is

sometimes so called in the old books. *Litt.* sect. 94. *Termes de la ley*, voc. *Common Law*.

**COMMON PLEAS.** [L. Lat. *communis placita*; L. Fr. *communes plees*.] Common causes or suits. A term anciently used to denote civil actions, or those depending between subject and subject, as distinguished from *pleas of the crown*, (q. v.) 3 *Bl. Com.* 38, 40. *Britt.* fol. 2 b. *Gilb. C. Pleas*. 1. See *Placitum*.

The singular "common plea" is sometimes used in the old books. *Nul common plee ne soit desormes tenu a leschequer. Artic. sup. Chart.* c. 4.

**COMMON PLEAS, Court of.** [L. Lat. *bancus, bancus communis, communia placita*.] One of the superior courts of common law in England, consisting of a chief justice and four puisne judges; supposed by some writers to have been first established as a permanent court by Magna Charta, and now constantly held in Westminster Hall; called also anciently, and still sometimes technically, the court of *Common Bench*, (q. v.) 3 *Bl. Com.* 37—40. 3 *Steph. Com.* 402. *Termes de la ley. Gilb. C. Pleas. Introd.* 31. Lord Coke supposes it to have existed before Magna Charta, and quotes in support of this opinion not only Glanville, but the twelfth and thirteenth chapters of Magna Charta itself, where mention is made of the justices of *the bench (de banco)* [the ancient title of this court,] as of a court already established. *Glanv.* lib. 2, c. 6. 2 *Inst.* 22. 1 *Reeves' Hist. Eng. Law*, 57, 58. 8 *Co. pref. Id.* 289. See *Bancus, Bench*. The title of "Common Pleas" (*communis placita*), may, however, have been derived from the eleventh chapter of the Charter.

This court has always exercised an exclusive jurisdiction over real actions, and has been considered as the principal seat of the learning relative to ordinary actions between man and man, (or *common pleas*, as they were anciently denominated.) Hence it is styled by Lord Coke "the lock and key of the common law." 4 *Inst.* 99. 3 *Bl. Com.* 40. 3 *Steph. Com.* 402. Its practice seems to have been, from a very ancient period, monopolized by a class of advocates termed *serjeant counters*, or counters of the bench, (*banci narratores*, qq. v.); and the same exclusive privilege has been enjoyed by the modern serjeants at law, during term time, down to the year 1834, when the court was suddenly opened to the whole profession by royal warrant, the validity of which, however, was, after an acquiescence of five years, successfully

impeached by the serjeants, and in 1840 the court was closed. Recently, however, this privilege has been abolished by statute, and the court permanently thrown open to the English bar generally. 3 *Man. Gr. & Scott*, 537.

**COMMON RECOVERY.** In conveying. A species of common assurance, or mode of conveying lands by matter of record, formerly in frequent use in England, but recently abolished by statute 3 & 4 Will. IV. c. 74. 2 *Bl. Com.* 357. 1 *Steph. Com.* 530. It was in the nature and form of an action at law, carried regularly through, [in which respect it differed from a *fine*, which was in the form of a suit *compromised*,] and ending in a *recovery* of the lands against the tenant of the freehold; which recovery, being a supposed adjudication of the right, bound all persons, and vested a free and absolute fee simple in the recoveror. 2 *Bl. Com.* 357. 1 *Steph. Com.* 524. It was called a *common recovery* to distinguish it from a real adjudication. *Id. ibid.* 5 *Cruise Dig.* 269.

Common or feigned recoveries were first invented or introduced by the clergy, in order to evade the statute of mortmain. 2 *Bl. Com.* 271. 2 *Reeves' Hist. Eng. Law*, 155. See *Mortmain*. To effect this purpose, the religious houses used to set up a fictitious title to the land which it was intended they should have, and brought an action to recover it against the tenant, who by fraud and collusion made no defence, and thereby judgment was given for the religious house, which then recovered the land by sentence of law upon a supposed prior title. 2 *Bl. Com.* 271. These common recoveries were afterwards employed as a contrivance to elude the statute *De Donis*, and as a means of barring estates tail, and becoming on this account more and more general, they were finally recognized as a regular mode of conveyance; retaining at the same time, however, all the forms of a judicial proceeding as they had when they were real actions. *Crabb's Hist. Eng. Law*, 390, 541. 2 *Bl. Com.* 117. 1 *Steph. Com.* 235. 4 *Kent's Com.* 13, 497.

Common recoveries were formerly in use in some of the United States, but have generally become obsolete, where they have not been expressly abolished. They were abolished by statute in New-Jersey in 1799, and in New-York by the Revised Statutes. 2 *R. S.* [343,] 265, § 24. In Pennsylvania and North Carolina they appear to be still recognized as lawful conveyances. 4 *Kent's*

*Com.* 497, note. See *U. S. Dig. & Supplement*, Common Recovery.

**COMMON SCOLD.** [*L. Lat. communis rixatrix.*] A quarrelsome woman, whose conduct is a public nuisance to her neighborhood. 4 *Bl. Com.* 168. In England, common scolds may be indicted, and were formerly punishable by being placed in the trebucket, castigatory, or cucking stool, (q. v.) *Id. ibid.* 169. In American law common scolds are nuisances, and may be punished as such. *Wharton's Am. Crim. Law*, 505.

**COMMON SEAL.** The seal of a corporation, by which alone, at common law, it could speak and act. *Davies' R.* 121. *Dyer*, 81 a. The rule requiring a seal to bind a corporation has, however, been considerably relaxed in England, and is, in a great degree, done away in the jurisprudence of the United States. 2 *Kent's Com.* 288—291, and notes.

**COMMON SERJEANT.** A judicial officer attached to the corporation of the city of London, who assists the recorder in disposing of the criminal business at the old Bailey sessions, or Central Criminal Court. *Holthouse. Centr. Crim. C. Rep. passim.*

**COMMON VOUCHER.** The vouchee in common recoveries; the person vouched to warranty, or called on to defend the title of the tenant in those proceedings; called *common* because the same person, (viz. the crier of the court,) acted as vouchee in them all. 2 *Bl. Com.* 358, 359. See *Vouchee*.

**COMMONABLE.** Entitled to common. Commonable beasts are either beasts of the plough, as horses and oxen; or such as manure the land, as kine and sheep. Beasts not commonable are swine, goats and the like. *Co. Litt.* 122 a. 2 *Bl. Com.* 33.

**COMMONALTY, Communality, Comminality.** [*Lat. populus, plebs, communitas.*] In English law. The commoners or people of England, as distinguished from the nobility. 1 *Bl. Com.* 403. *Stat. Westm.* 1, pr.

The middle classes in England; the better and more influential sort of commoners. *Cowell, voc. Comminality. Holthouse.*

**COMMONALTY.** One of the component parts of an incorporated company, which usually consists, in England, of the master, wardens and commonalty; the two

first being the chief officers or members, and the latter those who are usually called of the livery. *Whishaw. Holthouse.* See *Livery.*

In American law, it is similarly used to designate one branch or division of the members of a municipal corporation; as "the mayor, aldermen and commonalty" of a city.

**COMMONS.** The commoners or people of England, as distinguished from the nobility.\* *Holt, C. J., 2 Ld. Raym. 950.* The commons consist of all such men of property in the kingdom, as have not seats in the house of lords. 1 *Bl. Com. 158.*

The popular branch of the English parliament; the house of commons. *Id. 160.*

**COMMORANCY.** [L. Lat. *commorantia*, from *commorari*, to stay, or sojourn.] The dwelling in any place as an inhabitant; which consists in usually lying there. 4 *Bl. Com. 273.* In American law it is used to denote a mere temporary residence. *Shaw, C. J., 19 Pick. R. 247, 248.*

**COMMORANT.** Staying or abiding; dwelling, or usually lying in a place. 4 *Bl. Com. 273.* See *Commorancy.*

**COMMORIENTES.** Lat. [from *commorire*, to die together.] In the civil law. Persons dying together, in the same place, or from the same cause. *Hubback's Evid. of Succession, 187. Dig. 84. 5. 8, 9, 16. 2 Kent's Com. 435, 436, note. 8 Metcalf's R. 371. 1 Barbour's Ch. R. 264.*

**COMMOTE.** [L. Lat. *commotum*, from Brit. *cymbod*; *cym*, together, *bod*, being or dwelling; or from *cwmwd*, a province.] Half of a cantred or hundred in Wales, containing properly fifty villages. *Stat. Walliæ, 12 Edw. I. 21 Hen. VIII. c. 26. Spelman, voc. Commotum.*

A great seigniorship or lordship, including one or more manors. *Co. Litt. 5 a.* Part of a seigniorship. *Thel. Dig. lib. 8, c. 2, ¶ 18.*

**COMMOTUM.** L. Lat. A commote, (q. v.) *Spelman.*

**COMMUNANCE.** In old English law. The commoners, or tenants and inhabitants, who had the right of common, or commoning in open fields or woods. *Cowell.*

**COMMUNARE.** L. Lat. In old English law. To common; to enjoy the right of common. *Cowell, voc. Communance.*

**COMMUNE CONCILIUM REGNI.** Lat. The common council of the realm. One of the names of the English parliament. 1 *Bl. Com. 148.*

**COMMUNE VINCULUM.** Lat. A common or mutual bond. Applied to the common stock of consanguinity, and to the feudal bond of fealty, as the common bond of union between lord and tenant. 2 *Bl. Com. 250. 3 Id. 230.*

**COMMUNI DIVIDUNDO.** Lat. In the civil law. The name of an action brought for dividing a common property. *Inst. 4. 17. 5. Dig. 10. 3. Story on Partn. § 352.*

**COMMUNIA.** L. Lat. [from *communis*, common, or according to Bracton, from *cum*, with, and *una*, together; *una cum aliis.*] Common. *Bract. fol. 222. Communia pasturæ*, common of pasture. *Id. ibid. Reg. Orig. 155 b, 156. Communia turbariæ*, common of turbary. *Id. Communia piscariæ*, common of piscary. *Id.*

**COMMUNIA**, [plur. of *communis*, q. v.] Lat. In old English law. Common things, *res communes*. Such as running water, the air, the sea and sea shores. *Bract. fol. 7 b.*

**COMMUNIA.** Lat. In old European law. Communities. Towns enfranchised by the crown, in most of the feudal kingdoms of Europe, about the twelfth century, and formed into free corporations, by what were termed charters of community. 1 *Robertson's Charles V. 24—29*, and notes in Appendix.

**COMMUNIA PLACITA.** L. Lat. In old English law. Common pleas or actions; those between common persons, i. e. between one subject and another, as distinguished from *placita coronæ*, pleas of the crown, or criminal actions. *Reg. Orig. 187 b. Bract. fol. 115 b. Communia placita non sequantur curiam nostram, sed teneantur in aliquo loco certo.* Common pleas shall not follow our court, but shall be held in some certain place. *Mag. Charta, c. 11. F. N. B. 24 D, note.* This provision is generally considered as fixing the origin of the English court of common pleas. *Communias placita inter subditos, ex jure nostro, quod commune vocant, in hoc disceptantur:* Common pleas between subjects are determined in this [court] according to our law which they call common. *Camd. Britt. 113.* See *Common Pleas, Common Bench.*

**COMMUNIBUS ANNIS.** Lat. In ordinary years; one year with another; on the annual average. 2 *Bl. Com.* 322.

**COMMUNICARE.** L. Lat. In old English law. To common. *Bract.* fol. 229 b. *Communicantes*; commoners. *Id. ibid.*

**COMMUNIS.** Lat. Common. *Communis rixatrix*; a common scold. 4 *Bl. Com.* 168. *Communis scriptura*; a common writing, or writing common to both parties; a chirograph. *Glanv. lib.* 8, c. 1. *Communis strata*; a common street. *Stat. Marlbr. c.* 15. 1 *Stra.* 44.

**COMMUNIS ERROR.** Lat. A common error; an opinion or practice which has commonly been held or observed, though originally perhaps without adequate foundation in law.\*

**Communis error facit jus.** Common error makes law. 4 *Inst.* 240. *Noy's Max.* 32, max. 27. *Broom's Max.* 99, 100. A common error may in some cases pass current as law. Thus, a practice which has been generally observed in a state for a great length of time, without objection or question, though it possibly might have originally been impeached, will be upheld in law, if the public good require it. This maxim is frequently applied to modes of conveyance which have been long in use. *Plowd.* 33 b. *Shep. Touch.* 40. *Story, J., 5 Mason's R.* 67, 69. 4 *N. Hamp. R.* 458. 2 *Hilliard's Real Prop.* 268.

**COMMUNIS OPINIO.** Lat. Common opinion; general professional opinion. According to Lord Coke, common opinion is good authority in law. *Co. Litt.* 186 a. See **A communis observantia non est recedendum.** But this rule has in modern times been questioned, or much qualified. Lord Ellenborough, C. J., 3 *M. & S.* 396, 397. Lord Denman, C. J., *O'Connell v. Reg.* (Leahy's ed. 28.) *Gibson, C. J., 4 Penn. St. R.* 13, 28.

**COMMUNITAS.** Lat. [from *communis*.] In old English law. A community, company or society. *Towns. Pl.* 18.

**COMMUNITAS REGNI ANGLIÆ.** Lat. The general assembly of the kingdom of England. One of the ancient names of the English parliament. 1 *Bl. Com.* 148. According to Cowell, it signified the barons and tenants in capite of the kingdom.

**COMMUTATIVE CONTRACT.** [from *commutare*, to change or exchange.] In the

civil law. A contract in which the intention of each of the parties is to receive as much as he gives, [or an equivalent for what he gives.] *Pothier Contr. of Sale*, part 1, sect. 1.

**COMPANAGE.** [L. Lat. *companagium*, from *cum*, with, and *panis*, bread.] In old English law. Any meat, or other edibles, to be eaten with bread. *Cowell. Quicquid cibi cum pane sumitur. Spelman, voc. Companagium.*

**COMPANAGIUM.** L. Lat. Companage, (q.v.) *Spelman.*

**COMPARERE.** Lat. [L. Fr. *comparer*, *compoir*.] In old English practice. To appear; closely rendered in the Scotch law, to *compear*. *Comparet*; he appears. *Bract.* fol. 334 b. *Comperuit*; he appeared. See *Comperuit ad diem. Comparebit*; he shall appear. *Reg. Orig.* 291 b. *Comparuerit. Bract.* fol. 365. *Comparuisset. Reg. Jud.* 5. *Comparentibus*; appearing. *Bract.* fol. 183 b, 372 b. *Cum partes in judicio comparuerint*; when the parties have appeared in court. *Id.* fol. 296 b.

**COMPARATIO LITERARUM.** L. Lat. Comparison of writings, or handwritings. *Bell's Contr. of Sale*, 69. See *Collatio signorum, Comparison of hands.*

**COMPARISON OF HANDS.** In the law of evidence. A mode of proving a handwriting or signature, by comparing it with another, in order to ascertain whether both were written by the same person.\* In England, this species of evidence is, in general, not admissible. 5 *Ad. & Ell.* 703. *Best on Presumptions*, 221—234, §§ 162—171. In some of the United States, as in New-York, this rule is followed. 5 *Hill's R.* 182. 1 *Denio's R.* 343. In others, a different rule has been established. 1 *Greenleaf on Evid.* §§ 579—581, and notes.

**COMPASCUUM.** Lat. [from *compasci*, to feed together.] Belonging to commonage. *Jus compascuum*; the right of common of pasture. See *Common*.

**COMPATERNITAS.** Lat. In the canon law. A kind of spiritual relationship (*cognatio spiritualis*) contracted by baptism. *Heinecc. Elem. Jur. Civ. lib.* 1, tit. 10, § 161, note. *Bract.* fol. 298 b. One of the grounds of divorce. *Id. ibid.*

**COMPEAR.** In Scotch law. To appear. 1 *Forbes' Inst.* part 4, b. 2, ch. 2.

tit. 2. Very literally formed from the L. Lat. *comparere*, (q. v.)

**COMPELLATIVUM.** L. Lat. [from *compellare*, to accuse.] An accuser or adversary. *Whishaw*.

**COMPENSATIO.** In the civil law. Compensation, or set-off. A proceeding resembling a set-off in the common law, being a claim on the part of the defendant to have an amount due to him from the plaintiff deducted from his demand. *Dig. 16. 2. Inst. 4. 6. 30, 39. 3 Bl. Com. 305. 1 Kames' Equity, 395.*

**COMPENSATIO CRIMINIS.** Lat. (Set-off of crime or guilt.) In practice. The plea of recrimination in a suit for a divorce; that is, that the complainant is guilty of the same kind of offence with which he or she charges the defendant. *Shelford, Marr. & Div. 440. 2 Kent's Com. 100. See Recrimination.*

**COMPENSATION.** In the Scotch law. Set-off. *1 Kames' Equity, 395, 396. 2 Id. 101.*

**COMPERTORIUM.** L. Lat. [from *comperire*, to discover.] In the civil law. A judicial inquest made by delegates or commissioners, to find out and relate the truth of a cause. *Kennett's Par. Ant. 575. Cowell.*

**COMPERUIT AD DIEM.** L. Lat. (He appeared at the day.) In practice. A plea in an action of debt on a bail bond, that the defendant appeared at the day required, by putting in bail, according to the condition of the bond. *1 Tidd's Pr. 310, 318.*

**COMPESTER.** [L. Lat. *compostare*.] To manure. *Co. Litt. 122 a.*

**COMPETENCY.** Capability, admissibility. Applied to witnesses, to signify legal ability to be received and examined on the trial of a cause. *3 Bl. Com. 369.*

Propriety or sufficiency as a legal remedy. See *Competere*.

**COMPETERE.** Lat. In the civil and common law. To be proper, as a legal remedy; to lie, as an action. *Actio ei competit*; an action lies for [may be maintained by] him. *Inst. 4. 1. 13. Bract. fol. 108 b. Competit assisa*; an assise lies. *Id. fol. 25. Competunt heredi duo remedia*; the heir has two remedies. *Id. fol. 219.* Hence the modern phrase, *competency of actions. Supra.*

To be proper or available; as a pleading. *Competit exceptio—replicatio, &c. Bract. fol. 25, 26.*

**COMPLAINANT.** [Lat. *querens*.] In practice. One who complains of another by instituting legal proceedings against him. The actor, or party suing in equity, answering to the plaintiff (which has the same sense) at common law. The term plaintiff, however, is also frequently used in equity proceedings.\*

**COMPLEMENTUM JUSTITIÆ.** L. Lat. In old practice. Fullness of justice; full justice. *Reg. Orig. 88, 89.*

**COMPOS MENTIS,** [plur. *composes mentis*.] Lat. In possession of one's mind, or mental faculties; of sound mind. *4 Bl. Com. 25. 2 Kent's Com. 451.*

**COMPOS SUI.** Lat. Having the use of one's limbs, or the power of bodily motion. *Si fuit ita compos sui quod itinerare potuit de loco in locum*; if he had so far the use of his limbs as to be able to travel from place to place. *Bract. fol. 14 b.*

**COMPOSITIO.** Lat. [from *componere*, to put together, or frame.] A putting together, or making up; an agreement, composition or satisfaction.\* See *Composition*. A statute or ordinance. See *infra*.

**COMPOSITIO MENSURARUM.** Lat. The ordinance of measures. The title of an ancient ordinance, not printed, mentioned in the statute 23 Hen. VIII. c. 4; establishing a standard of measures. *1 Bl. Com. 275.*

**COMPOSITIO ULNARUM ET PERTICARUM.** Lat. The statute of ells and perches. The title of an English statute establishing a standard of measures. *1 Bl. Com. 275.*

**COMPOSITION.** An agreement between debtor and creditor, by which the latter agrees to discharge the former on payment of a certain sum.\* See *U. S. Dig. & Supplement, Composition*.

In English ecclesiastical law. An agreement, (otherwise called a *real composition*), made between the owner of lands, and a parson or vicar, with the consent of the ordinary and the patron, that such lands shall, for the future, be discharged from payment of tithes by reason of some land, or other real recompense given to the parson, in lieu and satisfaction thereof. *2 Bl.*



*Com.* 28. *Reg. Orig.* 38 b. 2 *Inst.* 490. 2 *Wooddes. Lect.* 67, 68. 3 *Steph. Com.* 129.

**COMPOSITION.** In old European law. A sum of money paid among the early barbarous nations of Europe, as satisfaction for an injury, either to the person offended, when capable of receiving it, or to his relatives; and so called because originally made by mutual agreement of the parties. 1 *Robertson's Charles V.* Appendix, Note xxiii. *Esprit des Lois*, liv. 30, c. 19. It might be paid in cattle, corn, moveables, or lands, instead of money. *Id. ibid.*

**COMPOTUS.** L. Lat. An old form of *computus*, (q. v.) *Stat. Marlbr.* c. 22. *Stat. Westm.* 2, c. 11.

**COMPOUNDING FELONY.** In criminal law. The offence of taking a reward for forbearing to prosecute a felony. As where a party robbed takes his goods again, or other amends upon an agreement not to prosecute. 4 *Chitty's Bl. Com.* 133 and notes. 4 *Steph. Com.* 259. *Steph. Crim. Law*, 66. It is a misdemeanor at common law, and by statute, and punishable by imprisonment. *Id. ibid.* *Lewis' U. S. Crim. Law*, 200—203.

**COMPRINT.** In old English law. The surreptitious printing by one bookseller of another's copy, to make gain thereby, and which is not only contrary to the common law, but is also forbidden by several English statutes. *Stat.* 14 *Car.* II. c. 33; 16 *Car.* II. c. 6; 16 & 17 *Car.* II. c. 7; 17 *Car.* II. c. 4. *Cowell.*

**COMPRIVIGNI.** Lat. In the civil law. Children by a former marriage, (individually called *privigni*, or *privignæ*,) considered relatively to each other. Thus, the son of a husband by a former wife, and the daughter of a wife by a former husband, are the *comprivigni* of each other. *Inst.* 1. 10. 8. See *Privignus*, *Privigna*.

**COMPROMISE.** [Lat. *compromissum*, q. v.] A mutual agreement between two or more persons at difference, to put an end to such difference upon certain terms agreed upon. *Whishaw.*

A mutual agreement to submit matters in dispute to the decision of arbitrators.\* *Termes de la ley.* *Cowell.* This was formerly the ordinary meaning of the term, derived from the *compromissum* of the civil law, (q. v.)

Any adjustment of matters in dispute,

by mutual concession without resort to the law. *Tomlins.*

**COMPROMISSUM.** Lat. [quasi *compromissum*, a mutual promise.] In the civil and canon law. A submission to arbitrators. 4 *Reeves' Hist. Eng. Law*, 13, and note (p). Hence the modern term *compromise*, (q. v.)

**COMPTROLLER.** Properly **CONTROLLER.** See *Controller*.

**COMPURGATOR.** Lat. [from *con*, together, and *purgare*, to purge or clear.] In old European law. One who *purged* another from an accusation or charge, by swearing *with*, or after him, that he believed his oath of his own innocence.\* In the old mode of trial by wager of law, the defendant first himself swore that he did not owe the plaintiff any thing, and then produced (usually) eleven *compurgators*, who swore after him that they believed in their consciences that he spoke the truth. 3 *Bl. Com.* 342, 343. 3 *Steph. Com.* 525. *Co. Litt.* 295. *Bract.* fol. 410. See *Law, Wager of law*.

The trial by compurgators seems to have been equally known to the British, Saxon and Norman laws, as well as to the laws of the barbarous nations of the continent. *Spelman*, voc. *Assath.* *Crabb's Hist. Eng. Law*, 30. *Grand Coustum.* c. 85. [26.] *Esprit des Lois*, liv. 28, c. 13. It was anciently confined to charges of *crime*, and was conducted by the compurgators laying their hands on the gospels, or on some relics, and the party accused laying his hand over all the rest, and swearing by God and all the hands under him, that he was not guilty of the crime laid to his charge. The compurgators were supposed, by this act, to declare upon their oaths, that they believed he had sworn the truth, and the party himself was said to *swear by any given number of hands*, according to the number of persons joining in the oath. *Ducange*, voc. *Juramentum*. Hence the phrase *jurare duodecima manu*, and the name of *compurgators*, as *contributing* by their oaths to *purge* the party of the crime laid to his charge. *Crabb's Hist. ub. sup.* The feudists called them *sacramentales*. *Lib. Feud.* tit. 4, sect. 3. and tit. 10, and 26. *Cowell*, voc. *Law*. They were also termed *consacramentales* and *conjuratores*. *Spelman*, voc. *Lex, Legem vadiare*.

**COMPUTATION.** [Lat. *computatio*.] The account and construction of time by

rule of law, as distinguished from any arbitrary construction of parties; as of how many days a month shall consist; on what day a lease shall be said to commence and end; what days shall be included or not in the times of notices, rules of court, &c.; that fractions of a day shall not be reckoned, and the like.\* *Cowell. Termes de la ley. 2 Chitt. Bl. Com. 140, note. 4 Kent's Com. 95, note b. See Time.*

COMPUTO. See *Computus*.

COMPUTUS, (sometimes written COMPOTUS.) L. Lat. [from *computare*, to count, or account.] An account. The old writ of account was called a writ *de computo*, from the words used, *quod juste et sine dilatione, reddat rationabile computum suum*; (that justly and without delay, he render his reasonable account.) *Reg. Orig. 135.*

COMTE. Fr. [Lat. *comes*.] Count. A title of office in the ancient law of France, denoting a governor of a particular territory or district, who united the characters of a military leader and a judge. As a judge he had an equal jurisdiction with the *missus dominicus*, or king's commissary. *Esprit des Lois*, liv. 28, c. 28; liv. 30, c. 18. As a military officer, he commanded the freemen, and led them to the field. *Id.* liv. 30, c. 17, 18. Montesquieu says he was at the head of all the freemen of the monarchy. *Id.* liv. 31, c. 23. See also *Id.* liv. 30, c. 18; liv. 31, c. 1. See *Comes, Count*.

In later times, a title of nobility.

COMYN. L. Fr. Common. *Kelham*.

CONCEALMENT. The suppression or keeping back of a fact or circumstance privately known to one of the parties to a contract, either through inadvertence or mistake, or intentionally in order to draw the other into a bargain from his ignorance of such fact, and his believing the contrary.\* Lord Mansfield, 3 *Burr.* 1905. 2 *Kent's Com.* 482—485. 3 *Id.* 282. Thus, where the insured keeps back from, or neglects to communicate to the underwriter, any material circumstance in his knowledge, in consequence of which the latter is led into a belief that the circumstance does not exist, and is induced to estimate the risk as if it did not exist, such concealment renders the policy void.\* 3 *Burr. ub. sup.* Concealment, however, is distinguished by Lord Mansfield from an innocent *silence* as to grounds open to both parties to exercise their judgment upon. *Aliud est celare,*

*aliud tacere; neque enim id est celare quicquid reticeas; sed cum quod tu scias, id ignorare emolumenti tui causa velis eos, quorum intersit id scire.* (It is one thing to conceal, another thing to be silent; for mere silence does not always amount to concealment, but only when it is coupled with a desire that those whose interest it is to know a fact known to yourself, should remain ignorant of it, with a view to your own advantage.) *Id. ibid.* See 2 *Duer on Ins. Lect. xiii.*

CONCEALERS. [L. Lat. *concelatores*; from *concelando*, says Cowell, by antiphrasis; because they did the reverse of concealing.] In old English law. Detectors or discoverers of concealed lands. Persons appointed by letters patent, (termed letters of concealment,) to discover lands, which in the reigns of Elizabeth and James, were suspected of being concealed, that is secretly kept or withheld from the crown. *Termes de la ley. Cowell.* They are called by Lord Coke *turbidum hominum genus*, (a troublesome, disturbing sort of men.) 3 *Inst.* 188.

CONCEDERE. Lat. To grant. *Cuiusque aliquid conceditur, conceditur et id sine quo res ipsa non esse potuit.* To whomsoever any thing is granted, that also is granted without which the thing itself could not exist. When any thing is granted, all the means to attain it, and all the fruits and effects of it are granted also; and shall pass inclusive, together with the thing, by the grant of the thing itself, without the words *cum pertinentiis*, or any such like words. *Shep. Touch.* 89. Thus, if a man conveys a piece of ground in the midst of his estate, a right of way to come to it, over the land not conveyed, will pass to the grantee. 1 *Steph. Com.* 464. *Co. Litt.* 56 a. *Broom's Max.* 198. This is one of the fundamental maxims of construction of deeds. 1 *Steph. Com.* 462, 463. Its phraseology is sometimes varied thus: *Cuiusque aliquid quid concedit, concedere videtur et id sine quo res ipsa esse non potuit.* To whomsoever any one grants a thing, he is supposed [seems] to grant that also without which the thing itself could not exist, [the grant itself would be of no effect.] 11 *Co.* 52. *Broom's Max.* 198. Thus, "if I grant you my trees in my wood, you may come with carts over my land to carry the wood." 11 *Co. ub. sup.*

Another form of this maxim is the following (q.v.): *Quando lex aliquid alieni concedit, concedere videtur et id sine quo res ipsa esse non potest, [or id per quod devenitur ad illud.]* When the law grants any

thing to any one, it is supposed [it seems] to grant that also without which the thing itself could not exist, [the means of attaining it.]

**CONCEDO.** Lat. I grant. An emphatic word in Anglo-Saxon grants of land. *Heming*, 158, 215, 228.

**CONCELARE.** L. Lat. To conceal. *Concelata*; concealed. *Bract.* fol. 70 b. *Concelamentum*; concealment. *Stat. Westm.* 2, c. 39.

**CONCEPTUM.** Lat. (Found.) In the civil law. A theft (*furtum*) was called *conceptum*, when the thing stolen was searched for, and found upon some person in the presence of witnesses. *Inst.* 3. 1. 4.

*Actio concepti*; an action which lay against the possessor of a thing stolen, although he did not commit the theft. *Id. ibid.*

**CONCESSI, CONCESSIT.** Lat. (I have granted—he has granted; from *concedere*, to grant.) Words anciently of frequent use in conveyances, being the emphatic and essential words in *grants*, properly so called; and formerly held to amount to a covenant in law. *Co. Litt.* 384 a. See *Concessio, Dedi et concessi, Grant.* Bracton, in commenting on the word *concessi*, says it imports consent, (*quod donationi consensum præbuit, quia non multum differt dicere concessi, quam dicere consensi*;) there being not much difference between saying *concessi* and *consensi*, (I have consented.) *Bract.* fol. 34 b.

*Concessimus* (we have granted) is prominently used in the commencement of *Magna Charta*, c. 1.

**CONCESSIO.** Lat. [from *concedere*, to grant.] A grant. One of the old common assurances, or forms of conveyance, being properly of things incorporeal, which cannot pass without deed. *Co. Litt.* 9 b. 2 *Bl. Com.* 317. See *Grant*.

*Concessio versus concedentem latam interpretationem habere debet.* A grant ought to have a broad interpretation [to be liberally interpreted] against the grantor. *Jenk. Cent.* 279.

**CONCESSOR.** Lat. [from *concedere*, to grant.] A grantor. *Towns. Pl.* 35.

**CONCESSUS.** Lat. [from *concedere*, to grant.] A grantee. *Towns. Pl.* 35. *Concessus per literas patentes*; a patentee. *Id.* 40.

**CONCESSUM.** Lat. [from *concedere*, to grant.] Granted, or allowed. A term of frequent occurrence in the old reports, denoting the assent of the court to a doctrine or position laid down on the argument of a cause. *Quod fuit concessum per totam curiam*; which was granted by the whole court. See the reports *passim*. Lord Coke observes that “an *il est dit*, (it is said,) with Littleton, is as good as a *concessum* in a book case.” *Co. Litt.* 328 b.

**CONCILIABULUM.** L. Lat. [from *concilium*.] A council house. *Towns. Pl.* 184.

**CONCILIUM.** Lat. In old English law. A council. *Concilium regis privatum*; the king's privy council; called also *concilium continuum*, (perpetual council) and *concilium secretum regis*, (the king's secret council.) *Crabb's Hist. Eng. Law*, 227.

*Magnum concilium regis*; the king's great council. *Id.* 228. One of the ancient names of the English parliament. 1 *Reeves' Hist. Eng. Law*, 62. 8 *Co.* 39. 1 *Bl. Com.* 148.

**CONCILIUM, CONSILIUM.** L. Lat. In English practice. Argument; or the sitting of a court to hear argument. *Dies concilii*; a day to hear the counsel of both parties in court. *Uterius concilium*; further argument. 2 *Stra.* 802. 2 *Wils.* 125. A motion for a *concilium*, or day for the argument of a cause, was formerly moved for upon reading the record in court, but now it is a motion of course. 2 *Tidd's Pr.* 737—739.

The counsel in a cause or matter. *Concilium non dedit advisamentum*; the counsel did not give the advice. *Cro. Eliz.* 9.

**CONCIO.** Lat. A discourse or sermon. *Towns. Pl.* 212.

**CONCIGNATOR.** L. Lat. A common council man; a freeman called to [a legislative] hall or assembly. *Cowell*.

**CONCLUDE.** [Lat. *concludere*, from *con*, together, and *claudere*, to shut.] To determine, finish, shut up, [or close.] *Co. Litt.* 37 a.

To estop or bar a man to plead or claim any other thing. *Id. ibid.* To bar or shut out; to shut up a party to a position which he has taken.\* Thus, where a sheriff has returned a *capias* that he has taken the defendant, he is *concluded* by such return, i. e. barred, shut out or estopped from questioning the return itself, or avoiding its

legal effect in making him liable to the plaintiff.\* *Termes de la ley. Cowell.*

**CONCLUSION.** [Lat. *conclusio*, from *concludere*, to conclude.] An estoppel or bar, arising from some previous act or admission of a party. See *Conclude*.

An inference or deduction of law.

An end or close, as of a pleading.

#### CONCLUSION TO THE COUNTRY.

In pleading. The tender of an issue to be tried by jury. *Steph. Plead.* 230. The peculiar conclusion of pleadings by way of traverse or denial; expressed on the part of the defendant, by the clause,—“*And of this he puts himself upon the country;*” (*et de hoc ponit se super patriam;*) and on the part of the plaintiff, by the clause,—“*And this he prays may be inquired of by the country;*” (*et hoc petit quod inquiratur per patriam;*) being the offer of the pleading party to refer the issue raised upon such pleading to the decision of a jury. *Steph. Plead.* 73, 78, 230.

**CONCORD.** [Lat. *concordia*; L. Fr. *peez*.] In old practice. An agreement between two or more, upon a trespass committed, by way of amends or satisfaction for it. *Plowd.* 5, 6, 8. The more modern term is *accord*. See *Accord and Satisfaction*.

An agreement between the parties to a fine of lands, how and in what manner the land should pass. *Termes de la ley*. Called in the statute *Modus levandi fines*, “the peace.” 2 *Inst.* 510. It was one of the necessary parts of a fine, and indeed the foundation and substance of it, being an acknowledgment that the lands in question were the right of the complainant.\* 2 *Bl. Com.* 350. 1 *Steph. Com.* 517. See *Fine, Cognizance, Peace*. Hence fines themselves were anciently called *concord*s, and *final concord*s. *Crabb's Hist. Eng. Law*, 94, 178.

**CONCORDES.** Lat. In old practice. Agreed, as a jury upon their verdict. *In dicendo veredictum suum, aut omnes concord*es sunt, aut quidam concordes et quidam discordes; in delivering their verdict, they are either all agreed, or some are agreed, and some not. *Bract.* fol. 292.

**CONCORDIA.** Lat. An agreement or concord. See *Concord*.

**CONCORDIA DISCORDANTIUM CANONUM.** Lat. The harmony of the discordant canons. A collection of ecclesiastical constitutions made by Gratian, an Italian monk, A. D. 1151; more commonly

known by the name of *Decretum Gratiani*, (q. v.) 1 *Bl. Com.* 82. See *Canon Law*.

**CONCOURSE OF ACTIONS.** See *Concurrence*.

**CONCUBINE.** [Lat. *concubina*, from *concumbere*, to lie together.] A woman with whom a man cohabits without marriage, as distinguished from a lawful wife.\* Where a man had a bastard son, and afterwards married the mother, and by her had a legitimate son, the woman before marriage was called *concubina*, and afterwards *mulier*. *Glanv.* lib. 7, c. 1. 2 *Bl. Com.* 248.

**CONCUBINE.** In the civil law. A woman taken to cohabit in the manner, and under the character of a wife, but without being authorized thereto by a legal marriage. *Shelford Marr. & Div.* 10, and note.

**CONCUBINAGE.** [Lat. *concubinatus*.] The cohabitation of a man with a woman to whom he is not united by marriage.\*

A plea or exception in the old action of dower, that the claimant was not lawfully married to the party from whose lands she sought to be endowed, but only his concubine.\* *Bract.* fol. 302. *Britt.* c. 107.

**CONCUBINAGE.** In the civil law. A species of marriage, or rather a half, or semi-marriage, (Lat. *semi-matrimonium*; Gr. *ἡμιγάμος*,) authorized by law. *Shelford Marr. & Div.* 10. *Cooper's Justin. Inst. Notes*,\* 420.

**CONCULCARE.** Lat. In old English law. To trample down, or tread under foot. *Conculcavit et consumpsit*; he trod down and consumed. *Reg. Orig.* 94.

**CONCURATOR.** Lat. In the civil law. A co-curator, or co-guardian. *Inst.* 1. 24. 1.

**CONCURRENCE.** [Lat. *concursum*, q. v.] In the civil law. A term applied to actions where two or more meet in, or may be brought by one and the same person. 1 *Mackeld. Civ. Law*, 195, § 198. It has not been adopted in the common law, though the participle “concurrent” is constantly used in expressing the same idea. See *Concurrere*. *Concourse* is the term used in Scotch law, although a concurrence of actions is not allowed in that law, except in special cases. *Ersk. Inst.* b. 4, tit. 1, § 64.

**CONCURRERE.** Lat. [from *con*, together, and *currere*, to run.] In the civil law. To run together; to meet; to be equally available for attaining a certain object; to concur.\* *Traditum est, duas lucrativas causas in eundem hominem, et eandem rem concurrere non posse*; it is a maxim that two lucrative actions cannot concur, or meet in the same person, and for the same thing. *Inst.* 2. 20. 6. *Ubi duæ actiones de eadem re concurrunt*; where two actions concur for the same thing. *Bract.* fol. 114. The verb *concur* is not used in English in this sense, being exclusively applied to persons.

*Concurrens, concurrentes*; concurrent. *Cum quis plures habeat actiones concurrentes de eadem re*; where one has several concurrent actions in respect of the same matter. *Bract.* fol. 114. The corresponding English phrases "*concurrent actions*," "*concurrent remedies*," are in constant use.

**CONCURSUS.** Lat. [from *concurrere*, q. v.] In the civil law. A running together; a meeting or concurrence. *Concursus actionum*; concurrence or concourse of actions. *Inst.* 4. 7. 5. *Id.* 4. 3. 11. See *Concurrence*.

A running together; collision or conflict. *Concursus creditorum*; the conflict or conflicting rights of creditors, in relation to their liens, privileges and priorities, in cases of insolvency and other cases. *Story's Conf. Laws*, § 325 c, § 423 a.

**CONDEMNATION.** In international law. The sentence of a court of competent jurisdiction, that a ship or vessel taken on the high seas was liable to capture, and was legally captured. *Chitty's Law of Nations*, 99. *Holthouse*. This sentence is in all cases essential to change the property. 1 *Kent's Com.* 102, 103.

**CONDEMNATION MONEY.** In practice. The damages which the party failing in an action is adjudged or condemned to pay; sometimes simply called the *condemnation*. 3 *Bl. Com.* 291. It answers to the *judicatum* of the civil law. *Id.* 291, 292.

**CONDEMPNARE.** L. Lat. An old form of *condemnare*, to condemn. *Bract.* fol. 128.

**CONDERE.** Lat. To make or establish. *Testamentum condere*; to make a will. *Bract.* fol. 60 b. *Condidit*; he made (a will). The name of a plea in the English ecclesiastical courts.

**CONDICTIO.** Lat. [from *condicere*,

to summon; *denuntiare*.] In the civil law. A personal action; an action against the person, in which the plaintiff complains that something ought to be given to him; (*dicimus condictionem actionem in personam esse, quæ actor intendit dari sibi oportere*.) *Inst.* 4. 6. 15. Sometimes called *condictitia actio*; an action of condiction. *Inst.* 3. 15. 1. This sense of the word is admitted in the Institutes to be an abuse (*abusivè dicimus condictionem*) of its original meaning, which was a denunciation or summoning, the word being derived from *condicere*, which, in the old language, signified to denounce, or summon a party to appear on a certain day to receive judgment. *Inst.* 4. 6. 15. *Theoph. in loco.* *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 6, § 1145. *Hallifax Anal.* b. 3, ch. 1, nu. 5.

**CONDICTIO CERTI.** Lat. In the civil law. An action which lies upon a promise to do a thing, where such promise or stipulation is certain, (*si certa sit stipulatio*.) *Inst.* 3. 16. pr. *Id.* 3. 15. pr. *Dig.* 12. 1. *Bract.* fol. 103 b.

**CONDICTIO EX LEGE.** Lat. In the civil law. A personal action, arising from a particular law. This had place when an obligation had been introduced by a new law, and no particular action had been expressed by which that obligation might be enforced. *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 6, § 1155. *Hallifax Anal.* b. 3, ch. 1, num. 16.

**CONDICTIO INDEBITI.** Lat. In the civil law. An action to recover back money paid by mistake, as *not* being *due* (*indebitum*) to the party who received it. *Inst.* 3. 15. 1. It approaches very nearly to our action for money had and received. *Cooper's Notes, in loc.\** 594. 1 *Kames' Equity*, 307. *Heinecc. El. Jur. Civ.* lib. 3, tit. 28, § 991.

**CONDICTIO REI FURTIVÆ.** Lat. In the civil law. An action which lay to recover a thing stolen, against the thief himself, or his heir. *Inst.* 4. 1. 19. *Heinecc. El. Jur. Civ.* lib. 4, tit. 1, § 1062. *Bract.* fol. 103 b.

**CONDITIO.** Lat. A condition. *Bract.* fol. 19, 47, *et passim*. See *Condition*.

*Conditio beneficiæ quæ statum construit, benigne, secundum verborum intentionem est interpretanda; odiosa autem, quæ statum destruit, stricte, secundum verborum proprietatem est accipienda.* A beneficial condition which creates an estate is to be construed favorably, according to the intention of the words; but an odious condition which de-

stroys an estate, is to be taken strictly according to the precise meaning of the words. 8 Co. 90. *Shep. Touch.* 134.

*Conditio dicitur, cum quid in casum incertum, qui potest tendere ad esse aut non esse, confertur.* A condition is said to be where any thing is annexed having reference to an uncertain event, which may tend to create or destroy it. *Co. Litt.* 201.

*Conditio (præcedens) adimpleri debet priusquam sequatur effectus.* A condition precedent ought to be fulfilled before the effect can follow. *Co. Litt.* 201.

**CONDITION.** [Lat. *conditio.*] A restraint annexed to a thing, so that by the not performance of it the party to the condition shall receive prejudice and loss, and by the performance, commodity and advantage. *West Symb.* par. 1, lib. 2, sect. 156. *Termes de la ley.* *Cowell.*

A *modus*, quality or qualification annexed to an estate, interest or right, whereby it may be created, enlarged or defeated upon an uncertain event.\* *Co. Litt.* 201 a. 2 *Crabb's Real Prop.* 792, § 2127. 2 *Bl. Com.* 151. 1 *Steph. Com.* 276. 4 *Kent's Com.* 121.

The definition of Lord Coke, from which the above is slightly modified, is in these words; "Condition—*est modus*, is a quality annexed by him that hath estate, interest or right to the same, whereby an estate, &c. may either be defeated, or enlarged or created, upon an uncertain event." *Co. Litt. ub. sup.* Strictly, *modus* and *conditio* are not in all cases convertible terms. The difference between them is shown in Bracton. *Bract.* fol. 18 b, 19. See *Modus*.

The most express words of condition, as given by Littleton, are the following:

*Upon condition, (sub conditione.)* *Litt.* sect. 328. *Co. Litt.* 203 a.

*Provided always, (proviso semper.)* *Litt.* sect. 329.

*So that, (ita quod.)* *Id. ibid.*

*That if it happen, (quod si contingat.)* *Id.* 330.

The use of any of these words in a deed (except the last, *Litt.* sect. 331, *Co. Litt.* 204 a;) makes an estate upon condition. See *Estate upon condition*. There are other words which sometimes amount to a condition, and sometimes not; such as *if, (si); for, (pro); by reason, (causa).* *Co. Litt.* 204 a. The word *that, (ut)*, is the proper word to express a *modus*, and *because, (quia)*, to express a consideration. *Id. ibid.* The words *to do, or that he shall do, (ad faciendum,)* and *doing, or on his doing, (faciendo); that he pay (ad solvendum); with that intention, (eâ intentione); to the effect*

*(ad effectum); for the purpose, (ad propositum);* make a condition in a will, but not in a deed. *Co. Litt.* 204. 2 *Crabb's Real Prop.* 802, § 2143; 803, § 2145. 4 *Metcalf's R.* 525, 528. 2 *Hilliard's Real Prop.* 357, 358.

**CONDITION EXPRESSED, OR CONDITION IN DEED.** A condition expressed in the deed by which it is created, (*conditio expressa.*) 2 *Crabb's Real Prop.* 792, § 2127. *Bract.* fol. 47. A condition annexed by express words to any feoffment, lease or grant. *Termes de la ley.* As where a feoffment or lease is made, reserving a rent payable at a certain day, with a proviso, that if it is not paid on that day, the feoffor or lessor may enter, this is a condition expressed, or condition in deed. *Id.* 2 *Crabb's Real Prop. ub. sup.* *Litt.* sect. 325. 4 *Kent's Com.* 123. Called also, formerly, an *actual* condition. *Termes de la ley.*

**CONDITION IN DEED, OR CONDITION IN FACT.** [Fr. *condition en fait.*] A condition expressed in a deed, (as a feoffment, lease, or grant,) in plain words, or legal terms of law. *Cowell.* *Co. Litt.* 201 a. See *Condition expressed*.

**CONDITION IMPLIED, OR CONDITION IN LAW.** A condition not expressed in words, but implied by law; a tacit condition, (*conditio tacita*). *Bract.* fol. 47. As if a grant be made to a man of an office generally, without adding other words, the law tacitly annexes hereto a secret condition, that the grantee shall duly execute his office. *Litt.* sect. 328, 378. 2 *Bl. Com.* 152. 2 *Crabb's Real Prop.* 804, § 2146. *Termes de la ley.* Anciently also called a *condition covert*. *Id.* So it was a tacit condition annexed to every tenancy, that the tenant should not do any act to the prejudice of the reversion. 4 *Kent's Com.* 122.

**CONDITION IN LAW.** [Fr. *condition en ley.*] A condition tacitly created [or annexed to a grant,] by law, without any words used by the party. *Co. Litt.* 201 a, 234 b. See *Condition implied*. A limitation is called by Littleton a condition in law. *Litt.* sect. 380. 2 *Bl. Com.* 155. See *Limitation*.

**CONDITION PRECEDENT.** A condition preceding an estate.\* A condition which must happen or be performed *before* the estate to which it is annexed can vest or be enlarged. As if a man grant to his lessee for years, that, upon payment of a certain sum within the time, he shall have the fee, this is a condition precedent, [that is, the condition *precedes* the estate in fee,] and

the fee does not pass until the money be paid. 2 *Bl. Com.* 154. *Co. Litt.* 217. *Termes de la ley.* 1 *Steph. Com.* 277—281. 2 *Wooddes. Lect.* 86. 2 *Crabb's Real Prop.* 792, § 2128. 4 *Kent's Com.* 125. 2 *Dallas' R.* 317.

**CONDITION PRECEDENT.** In the law of contracts. A condition preceding the accruing of a right or liability.\* An act essential to be performed by one party, prior to any obligation attaching upon another party, to do or perform another given act. *Holthouse. Chitty on Contracts*, 738.

**CONDITION SUBSEQUENT.** A condition following an estate.\* A condition annexed to an estate already vested, by the performance of which such estate is kept and continued, and by the failure or non-performance of which it is defeated.\* *Co. Litt.* 201. 2 *Bl. Com.* 154. As if a man grant an estate in fee simple, reserving to himself and his heirs a certain rent, and that if the rent be not paid at the times limited, it shall be lawful for him and his heirs to re-enter and avoid the estate; this is a condition subsequent, the estate of the grantee being defeasible, if the condition be not performed.\* *Litt. sect.* 325. 2 *Bl. Com.* 154. 1 *Steph. Com.* 278. 4 *Kent's Com.* 125. *U. S. Dig.* Condition I. (c).

**CONDITION INHERENT.** A condition annexed to the rent reserved out of the land whereof the estate is made; [or rather to the estate in the land, in respect of rent, &c.] *Shep. Touch.* (by Preston), 118.

**CONDITION COLLATERAL.** A condition where the act to be done is a collateral act. *Id. ibid.*

**CONDITION AFFIRMATIVE.** A condition which consists of doing a thing; as provided that the lessee shall pay rent, &c. *Id. ibid.*

**CONDITION NEGATIVE.** A condition which consists in not doing a thing; as provided that the lessee shall not alien, &c. *Id. ibid.*

**CONDITION RESTRICTIVE.** A condition for not doing a thing; as that the lessee shall not alien or do waste, or the like. *Id. ibid.*

**CONDITION COMPULSORY.** A condition expressly requiring a thing to be done;\* as that a lessee shall pay 10 l. such a day, or his lease shall be void. *Id. ibid.*

**CONDITION SINGLE.** A condition to do one thing only. *Id. ibid.*

**CONDITION COPULATIVE.** A condition to do divers things. *Id. ibid.*

**CONDITION DISJUNCTIVE.** A condition

requiring one of several things to be done. *Id. ibid.*

**CONDITIONAL FEE.** A fee restrained in its form of donation to some particular heirs, exclusive of others; as to the heirs of a man's body, by which only his lineal descendants were admitted, in exclusion of collateral heirs, or to the heirs male of his body, in exclusion both of collaterals and lineal females also. 2 *Bl. Com.* 110. 1 *Steph. Com.* 226. It was called a *conditional* fee by reason of the *condition* expressed or implied in the donation of it, that if the donee died without such particular heirs, the land should revert to the donor. 2 *Bl. Com.* 110. It was a fee simple, on condition that the donee had issue, [or the prescribed heirs.] *Id. ibid.* 4 *Kent's Com.* 11, 12. Under the statute *De donis*, conditional fees were changed into estates tail. *Id.* 11, *et seq.* 444. In the United States, conditional fees have generally partaken of the fate of estates tail, and have not been revived. In South Carolina, however, they still exist. *Id.* 16, 17. 1 *Hilliard's Real Prop.* 97, 98.

**CONDITIONAL LIMITATION.** A species of limitation of an estate, partaking of the nature of a condition. 4 *Kent's Com.* 127. As if a condition subsequent be followed by a limitation over to a third person, in case the condition be not fulfilled, or there be a breach of it, that is termed a conditional limitation. *Id.* 126. Sometimes considered as the same with a remainder. *Id.* 128, notes. *Id.* 249, 250.

This term is used in other senses than the foregoing. Thus it is said, that a conditional limitation is where an estate is so expressly defined, and limited by the words of its creation, that it cannot endure for any longer time than till the contingency happens upon which the estate is to fail. 1 *Steph. Com.* 278. And to this class are referred all base fees, and fees simple conditional at the common law. *Id. ibid.*

**CONDITIONAL STIPULATION.** In the civil law. A stipulation to do a thing upon condition, as the happening of any event. *Sub conditione stipulatio fit, cum in aliquem casum differtur obligatio. Inst.* 3. 16. 4.

**CONDONATION.** [Lat. *condonatio*, from *condonare*, to forgive.] In ecclesiastical law. Forgiveness. The forgiveness by a husband or wife, of a breach of marital duties on the part of the other, as of acts of adultery or cruelty. *Shelford Marr. &*

*Div.* 436, 445. It is either express or implied; express when signified by words or writing, and implied from the conduct of the parties, as where for instance the injured party, after reasonable knowledge of the infidelity of the other, continues to live with him or her, in a state of matrimonial connection, or renews such connection when it has been suspended.\* *Id.* 445. *Sanchez de Divortio*, lib. 10, disp. 5, cited *ibid.* 1 *Haggard's Eccl. Rep.* 130. 2 *Kent's Com.* 101, and notes. It is called a conditional forgiveness, being accompanied by an implied condition that the injury shall not be repeated. 3 *Hagg. R.* 629, 351. *Id.* 733, 752. 4 *Paige's R.* 460.

CONDUCT. See *Safe conduct*.

CONDUCT MONEY. In English practice. Money paid to a witness who has been subpœnaed on a trial, sufficient to defray the reasonable expenses of going to, staying at, and returning from the place of trial. *Lush's Pract.* 460. *Archb. New Pr.* 639.

CONDUCTI ACTIO. Lat. In the civil law. An action which the hirer (*conductor*) of a thing might have against the letter, (*locator*.) *Inst.* 3. 25, pr. 2. *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 25, § 929. See *Conductio*.

CONDUCTIO. Lat. [from *conducere*, to hire.] In the civil law. A hiring. Used generally in connexion with the term *locatio*, a letting. *Locatio et conductio*, (sometimes united as a compound word, *locatio-conductio*;) a letting and hiring. *Inst.* 3. 25. *Bract.* fol. 62, c. 28. *Story on Bailments*, §§ 8, 368. See *Locatio*.

CONDUCTOR. Lat. [from *conducere*, to hire.] In the civil law. A hirer. *Inst.* 3. 25. pr. & 5, 6. 2 *Kent's Com.* 586, note. *Conductor militum*; a presser of soldiers. *Cro. Car.* 71.

CONDUCTUS. Lat. [from *conducere*, to hire.] Hired. *Res conducta*; *conductum*; a thing hired. *Bract.* fol. 62.

CONE AND KEY. [*Cone* or *colne*, Sax. an account.] A phrase (partly Saxon, or early English,) used by Bracton in describing the privileges which a certain age gave a female in his time. *Femina in tali ætate*, (i. e. 14 vel 15 annorum,) *potest disponere domui suæ, et habere Cone et Keye.* *Bract.* fol. 86 b. A woman at such an age, (14 or 15,) may take charge of her house,

and have *cone and key*; (that is, keep the accounts and keys.) *Spelman*. A somewhat similar qualification in the son of a burgess is mentioned by Glanville, (lib. 7, c. 9;) and also by Bracton in another passage. *Bract.* fol. 86 b. ¶ 2. Some copies read *cover et keye*, as to which *Spelman* expresses a doubt. His own MS. copy of Bracton had *cone aut keye*. According to Lord Coke, "*cover et keye*" is the true reading, that is, *cofer and keye*; meaning that a woman at the age mentioned was able to discern what things were in a household, fit to be kept in *cofer*, under lock and *key*. 2 *Inst.* 203. See 1 *Reeves' Hist. Eng. Law*, 284, note. See *Key*.

CONFECION, *Confexion*. L. Fr. In old English law. A, or the making or execution of a written instrument. *Britt.* c. 28. *Confecion d'la chartr'*; the making of the charter. *Id.* c. 93.

CONFECTIO. L. Lat. [from *conficere*, to make; L. Fr. *confection*.] In old English law. A, or the making or execution of a charter, deed or other written instrument. *Bract.* fol. 39 b, 398. *Plowd.* 108 a. *A confectio*; from the making. 5 *Co.* 1. 1 *Ld. Raym.* 480.

CONFEDERACY. [Lat. *confederatio*.] A combination between two or more persons to do any hurt or damage to another, or to do any unlawful thing.\* *Termes de la ley*.

CONFESSIO. Lat. A confession. *Confessio in judicio*; a confession made in, or before a court.

*Confessio facta in judicio omni probatione major est*. A confession made in court is of greater effect than any proof. *Jenk. Cent.* 102.

*Confessus in judicio pro judicato habetur, et quodammodo sua sententia damnatur*. One who makes a confession in court is considered as having judgment passed upon him, and is in a manner condemned by his own sentence. 11 *Co.* 30. The peculiar meaning of the words in *judicio* seems to have been misapprehended in most of the translations of these maxims. See *In judicio, Judicium*.

CONFESSION AND AVOIDANCE. In pleading. The admission of the truth of a statement of fact contained in the pleading of the opposite party, coupled with the allegation of a new fact, which obviates or repels its legal effect, and thus avoids it.\* A pleading framed upon this



principle is called a pleading in *confession and avoidance*, or by way of *confession and avoidance*. *Steph. Plead.* 52, 198, 200. 3 *Bl. Com.* 310. Thus, where a release is pleaded in bar to a declaration, the plaintiff may reply, admitting the execution of the release, but avoiding the legal effect of that fact, by stating a new fact, viz. that it was obtained by fraud or the like.\* The admission, however, in these cases is never made in express terms, though it must always be distinctly implied in, or inferable from the matter of the pleading. *Steph. Pl.* 200.

CONFESSO. See *Pro confesso*.

CONFESSORIA ACTIO. Lat. In the civil law. An action for enforcing a servitude. 1 *Mackeld. Civ. Law*, 352, § 321. *Heinecc. El. Jur. Civ. lib.* 4, tit. 6, § 1135. See *Actio confessoria*.

CONFICERE. Lat. [from *con*, together, and *facere*, to make.] In old English law. To make or execute, as a deed or other written instrument. *Conficiendus*; to be made. *Towns. Pl.* 97. *Confectus*; made. *Profert chartam tali die confectam*; he produces a deed made on such a day. *Bract. fol.* 57 b.

CONFIDENTIAL COMMUNICATION. See *Privileged communication*.

CONFIRM. See *Confirmare, Confirmatio*.

CONFIRMARE. Lat. [from *con*, together, and *firmare*, to strengthen.] In old English law and conveyancing. To confirm; to make firm, or strong. (*firmum facere*; *Litt. sect.* 520); to give additional strength or validity.

*Confirmare* was used as an ordinary word in deeds of gift, in the time of Bracton. *Dedi et concessi, et hac præsentis chartæ meæ confirmavi*; I have given and granted, and by this my present charter have confirmed. *Bract. fol.* 34 b. In this application, it merely signified to give additional strength to what was *already* strong, and to give it at the *same time*, that is, by the same instrument; thus strictly preserving the etymology of the word; (*con*, together, or *simul*.) *Est confirmare id quod prius firmum fuit simul firmare. Id. ibid.* It is used in the same sense in *Magna Charta*, (c. 1.) *Concessimus Deo, et hac præsentis charta nostra confirmavimus*.

*Confirmare* was used afterwards as the effective word in deeds of confirmation,

properly so called. See *Confirmation. Noverint universi, &c., me A. de B. ratificasse, approbasse et confirmasse, &c.* Know all men, &c., that I, A. of B., have ratified, approved and confirmed. *Litt. sect.* 515. In this latter application, *confirmare* signified to make strong that which before was weak or defective. *Confirmare est id quod prius infirmum fuit firmare. Co. Litt.* 295.

*Confirmare nemo potest prius quam jus ei acciderit.* No one can confirm before the right accrues to him. 10 *Co.* 48.

*Confirmat usum qui tollit abusum.* He confirms the use [of a thing] who removes the abuse [of it.] *Moor,* 764.

CONFIRMATIO. Lat. [from *confirmare*, q. v.] A confirmation. *Confirmatio est prioris juris et dominii adepti firmatio, cum prima firmitate donationis; nihil enim novi attribuit, sed jus vetus consolidat et confirmat.* A confirmation is a making firm of a former right and ownership already obtained, with the first strength of the gift, [i. e. with all the strength it could have had from the original gift;] for it confers nothing new, but consolidates and confirms the old right. *Bract. fol.* 58.

*Confirmatio est nulla, ubi donum præcedens est invalidum.* A confirmation is null, where the preceding gift is invalid; that is, it has no effect to strengthen a void estate. *Co. Litt.* 295 b. See *Confirmation*.

*Confirmatio omnes supplet defectus, licet id quod actum est ab initio non valuit.* A confirmation supplies all defects, although that which has been done was not originally valid. *Co. Litt.* 295 b. *Confirmatio supplevit defectum. Bract. fol.* 271.

CONFIRMATIO PERFICIENS. L. Lat. A perfecting confirmation. A confirmation which tends and serves to confirm and make good a wrongful and defeasible estate, [by adding the right to the possession, or defeasible seisin,] or to make a conditional estate absolute, [by discharging the condition.] *Shep. Touch.* (by Preston,) 311.

CONFIRMATIO ORESCENS. L. Lat. An increasing or enlarging confirmation. A confirmation which tends and serves to increase and enlarge a rightful estate, and so to pass an interest, [viz. an estate.] *Shep. Touch. ub. sup.*

CONFIRMATIO DIMINUENS. L. Lat. A diminishing confirmation. A confirmation which tends and serves to diminish and abridge the services whereby a tenant doth hold, [operating as a release of part of the services.] *Shep. Touch. ub. sup.*

**CONFIRMATIO** (or **CONFIRMATIONES**) **CHARTARUM**. Lat. Confirmation of the charters. The title of a statute passed 25 Edw. I. confirming *Magna Charta*, and the Charter of the Forest, and by which the former is directed to be allowed as the common law; all judgments contrary to it are declared void; copies of it are ordered to be sent to all cathedral churches, and read twice a year to the people; and sentence of excommunication is directed to be as constantly denounced against all those that, by word, deed or counsel, act contrary thereto, or in any degree infringe it. 1 *Bl. Com.* 128. It is in the form of a charter or letters patent. *Crabb's Hist. Eng. Law*, 173. 2 *Reeves' Hist.* 101, 102.

**CONFIRMATION**. [Lat. *confirmatio*, q. v.] A conveyance of an estate or right *in esse*, whereby a voidable estate is made sure and unavoidable, or whereby a particular estate is increased [and enlarged.] *Co. Litt.* 295 b. *Litt.* sect. 515, 516. 2 *Bl. Com.* 325. 1 *Steph. Com.* 482. *Shep. Touch.* 311. *Termes de la ley*. An approbation of, or assent to an estate already created, by which the confirmor strengthens and gives validity to it, as far as it is in his power. *Gilb. Tenures*, 75. *Butler's Co. Litt.* lib. 3, note 253. The most common and proper words of making it are "have ratified, approved and confirmed," (*ratificasse, approbasse et confirmasse*.) *Litt.* sect. 515. *Shep. Touch.* 311. These are the operative words, although it is usual to insert the words "given and granted," also. *Watkins on Conv.* 221.

A confirmation belongs to that class of conveyances termed *secondary* or derivative, and is nearly allied to a release. 2 *Bl. Com.* 324, 325. How it differs from a release, see *Watkins on Conv.* 219. *Litt.* sect. 516, *et seq.* There are implied as well as express confirmations, the former being made by construction of law. *Co. Litt.* 295 b. *Shep. Touch.* 311. The party making a confirmation is sometimes called the *confirmor*, and he to whom it is made the *confirmer*. *Id. ibid.*

**CONFISCARE**. L. Lat. [from *con*, with, and *fiscus*, treasury; properly used only in the passive, *confiscari*.] To confiscate; to claim for, or bring into the fisc, or treasury, (*fisco vendicare*.) *Bract. fol.* 150.

**CONFISCATE**. [Lat. *confiscatum*, *confiscata*.] Confiscated; forfeited to the treasury or exchequer of the king or state; seized as forfeited. *Termes de la ley*.

*Staundf. Pl. Cor.* lib. 3, c. 24. *Cowell.* 1 *Bl. Com.* 299. See *To confiscate*, *Bona confiscata*.

To **CONFISCATE**. [L. Lat. *confiscare*, from *con*, with, and *fiscus*, a treasury.] To adjudge to be forfeited to the public treasury; to condemn private forfeited property to public use. *Webster*.—To convert or appropriate private property to the use of the state, as being forfeited; to transfer private property to the *fisc*, or public treasury, on the ground of its being forfeited.\* See 1 *Kent's Com.* 58, 59. Debts are sometimes said to be confiscated. *Id.* 62. See *Confiscation*.

"To confiscate" and "to forfeit" have been called synonymous terms, and have been so used. *Blount*. Chase, J., 3 *Dallas' R.* 199. This is on the authority of Lord Coke, who observes that *confiscare* and *forisfacere* are *synonyma*. 3 *Inst.* 227. As used in modern law, however, there seems to be a clear distinction between them; *to forfeit* being properly applied to the act of the individual, and the consequent condition of his property; *to confiscate*, to the action of the state thereon. The individual *forfeits*; the property itself is *forfeited*; the state *confiscates* it as forfeited. Property cannot be confiscated without being legally forfeited, but it may be forfeited without being confiscated, as where a forfeiture is not taken advantage of. Where property is forfeited, it does not vest in the government, until after a seizure, which then relates back to the time of the forfeiture. 1 *Story's R.* 109.

**CONFISCATION**. The act of condemning and adjudging to the public treasury. *Webster*.—The appropriation (usually by formal sentence of condemnation,) of private property to the use of the state; as being legally forfeited; the seizure and transfer of forfeited private property to the *fiscus* or public treasury.\* See *Confiscare*.

This term is sometimes used as the synonyme of *forfeiture*. *Blount*, voc. *Confiscate*. But it is rather the consequence of forfeiture, or forfeiture taken advantage of, and acted upon. It is founded upon forfeiture, and cannot exist without it, and therefore perhaps properly includes it; but a forfeiture may take place without confiscation following, as where it is waived or remitted.\* See *To confiscate*.

**CONFLICT OF LAWS**. [Lat. *conflictus legum*.] In international law. The opposition between the municipal laws of

different countries or states, in the case of an individual who may have acquired rights, or become subject to duties within the limits of more than one state. *Brande. 2 Kent's Com. 110, et seq. Story's Conflict of Laws, passim.* The *conflictus legum* is the most perplexing and difficult title of any in the jurisprudence of public law. *2 Kent's Com. 110.*

**CONFRAIRIE.** Fr. In old English law. A fraternity, brotherhood or society. *Cowell.*

**CONFRERES.** [Lat. *confratres.*] Brethren in a religious house; fellows of one and the same society. *Stat. 32 Hen. VIII. c. 24. Cowell.*

**CONFUSIO.** Lat. [from *confundere*, to pour together.] In the civil law. Confusion; a pouring or fusing together; a mixture of liquids or metals. *Inst. 2. 1. 27.* One of the modes of acquiring property in goods, and distinguished from *commixtio*, which properly was the intermingling of dry substances, as corn. *Inst. 2. 1. 27, 28. Bract. fol. 10.* There might be two sorts of *confusio*, viz. of similar substances, as of the wine of one man with the wine of another, or the gold of one with the gold of another; or of dissimilar substances, as wine with honey, or gold with silver. In either case, if the materials were mingled by mutual consent, or fortuitously without the consent of the owners, the whole mass as mingled was common to both. *Inst. 2. 1. 27. See Commixtio, Confusion.*

**CONFUSION.** In the common law. The intermixture of the goods of two persons, so that the several portions can be no longer distinguished. *2 Bl. Com. 405.* The term and, in a great degree, the doctrine are borrowed from the *confusio* of the civil law. The meaning of the former, however, has been so far modified as to include not only the intermixture or interfusion of liquids and metals, (the *confusio* proper of the civil law,) but also that of dry articles, (properly expressed in the same law by the term *commixtio*.) The doctrines also of the two systems so far differ, that while the civil law allows a party who wilfully intermixes his property with that of another, without his approbation or consent, a satisfaction for what he has so improvidently lost, the common law allows him nothing, but gives the entire property to the other party. *2 Bl. Com. 405. Inst. 2. 1. 28. 2 Steph. Com. 85. 2 Kent's Com. 364.*

*U. S. Dig. and Supplement, Confusion. See Confusio, Commixtio.*

**CONFUSION.** In the civil and common law. The blending or union of the characters of debtor and creditor in the same person; the union of the obligation of the debtor with the right of the creditor, which dissolves or extinguishes the former. *Heinecc. Elem. Jur. Civ. b. 3, tit. 30. § 1006. Ersk. Inst. lib. 3, tit. 4, § 23.* Thus, where a woman obligee marries the obligor, the debt is extinguished. *1 Salk. 306.*

**CONGÉ, Coungé.** L. Fr. In old English law. Leave, liberty or permission. *Par congé ou sauns congé*; by leave or without leave. *Britt. c. 48. Sauns coungé. Id. c. 12.*

In French maritime law. The passport of a vessel. *Jacobsen's Sea Laws, 71.*

**CONGÉ D'ACORDER.** L. Fr. [Lat. *licentia concordandi.*] In old English practice. Leave to accord, or agree. One of the formalities anciently observed in levying a fine. When the original writ was delivered in presence of the parties, before the justices, a countor, or pleader, said, "Sir Justice, *congé d'accorder*"; which was praying for leave to agree. *Stat. Modus levandi fines, 18 Edw. I. stat. 4. 2 Reeves' Hist. Eng. Law, 224. Crabb's Hist. E. Law, 178. Termes de la ley. Cowell. Blount. 2 Bl. Com. 350. See Licentia concordandi, Fine.*

*Congé d'accorder* is mentioned by Britton as a proceeding in ordinary actions. *Volons que parties pledauntz priauntz congé de accorder en nostre court eyent a ceo congé, forsque en cas de felonies*; we will that parties pleading praying leave to agree in our court, shall have leave for that purpose, except in case of felonies. *Britt. c. 74.*

**CONGÉ D'ESLIRE, (or D'ELIRE.)** L. Fr. [Lat. *venia eligendi.*] In English law. Leave to elect. The royal license or permission, sent to a dean and chapter, when any bishopric becomes vacant, empowering them to proceed to the election of a new bishop. *Termes de la ley. Cowell. Blount. 1 Bl. Com. 379, 382. 3 Steph. Com. 61, 67.*

**CONGEABLE.** Fr. [from *congé*, leave, or permission.] In old English law. That which is done with leave; lawfully done; lawful. *L'entry est congeable*; the entry is lawful. *Litt. sect. 693—695. Cro. Jac. 31.* So long as a disseisee maintained his entry by continual claim, his entry was said to be *congeable*. *Crabb's Hist. Eng.*

*Law*, 403. *Litt.* sect. 422. This term was first introduced in the reign of Edward III. 3 *Reeves' Hist. Eng. Law*, 22.

CONGILDONES. L. Lat. Fellow members of a gild. *Spelman*, voc. *Geldum*. See *Gild*.

CONGIUS. Lat. An ancient measure containing about a gallon and a pint. *Cowell*. *Blount*. *Cart. Edmundi Regis*, A. D. 946, cited *ibid*.

CONGRESS. In American law. The national legislature of the United States, consisting of the Senate and House of Representatives. 1 *Kent's Com.* 221, *et seq*.

CONJECTIO CAUSÆ. Lat. In the Roman law. The statement of a cause or case. The introductory part of an advocate's argument; answering nearly to the modern term *opening*.\* *Adam's Rom. Ant.* 265.

CONJECTURA. Lat. In the civil law of evidence. A slight degree of credence, arising from evidence too weak or too remote to produce belief. *Best on Presumptions*, 13, note. *Rationabile vestigium latentis veritatis unde nascitur opinio sapientis*. *Mascard. de Prob.* vol. 1, qu. 14, nu. 14, cited *ibid*. It is weaker than *suspicio*.

CONJUDEX. L. Lat. [from *con*, together, and *judex*, a judge.] In old English law. An associate judge. *Rez tali et con-judicibus suis salutem*; the king to such a judge and his associates, greeting. *Bract.* fol. 403.

CONJUGAL RIGHTS. See *Restitution of conjugal rights*.

CONJUNCT. [from Lat. *conjunctus*.] In Scotch law. Joint. *Ersk. Inst.* b. 8, tit. 8, § 34, *et seq*.

CONJUNCTIM. Lat. Jointly. *Inst.* 2. 20. 8. *Bract.* fol. 19. More closely rendered by the Scotch *conjunctly*. 2 *Kames' Equity*, 292. *Conjunctim tenens*; a joint tenant. *Reg. Jud.* 12 b. .

CONJUNCTIM ET DIVISIM. L. Lat. Jointly and severally. *Bract.* fol. 19. *Dyer*, 62 a. *Yelverton*, 203. 2 *Crabb's Real Prop.* 692, § 1974.

CONJURARE. Lat. [from *con*, together, and *jurare*, to swear.] To swear together; to combine or confederate under oath.

CONJURATIO. Lat. [from *conjurare*, q. v.] In old English law. A swearing together; an oath administered to several together; a combination or confederacy under oath. *Cowell*. *Blount*. *Tomlins*.

CONJURATION. [Lat. *conjuratio*.] In old English law. A plot or compact made by persons combining by oath to do any public harm. *Cowell*.

The offence of having conference or commerce with evil spirits, in order to discover some secret, or effect some purpose. *Stat.* 5 *Eliz.* c. 16. *Cowell*. Classed by Blackstone with witchcraft, enchantment and sorcery, but distinguished from each of these by other writers. 4 *Bl. Com.* 60. *Cowell*.

CONJURATOR, CONJURATUS. Lat. [from *conjurare*, q. v.] In old English law. One who swears or is sworn with others; one bound by oath with others; a compurgator; (L. Fr. *conjurour*.) *Britt.* cc. 27, 120.

CONNOISSEMENT. Fr. [Lat. *litteræ recognitionis*.] In French maritime law. A bill of lading. *Jacobsen's Sea Laws*, 172.

CONNUBIUM. Lat. [from *con*, together, and *nubere*, to marry.] In the civil law. Marriage; a mutual submission to the marriage ceremony. *Cooper's Justin. Inst. Notes*, \*420. One of the names of lawful marriage between citizens, among the Romans. *Adam's Rom. Ant.* 50, 502.

CONPOSSESSIO. Lat. In modern civil law. A joint possession. 1 *Mackelley's Civ. Law*, 245, § 236.

CONQUÆRERE. L. Lat. [from *con*, together, and *quærere*, to seek or gain.] To acquire. In classical Latin, *conquirere*.

CONQUÆSTOR. L. Lat. [from *conquærere*, q. v.] Conqueror. The title of William I. of England. 2 *Bl. Com.* 243. See *Conqueror*, *Conquest*.

CONQUÆSTUS, *Conquestus*. L. Lat. [from *conquærere*, q. v.] In feudal law. Acquisition or purchase; any means of acquiring an estate out of the course of inheritance; conquest. *Craig*, lib. 1, tit. 10, § 18. 2 *Bl. Com.* 242. *Id.* 48. See *Conquest*. The conquest of England by William I. *A conquestu Angliæ*. *Bract.* fol. 90, 209, 382. *Ante conquestum, in conquestu et post*; before the conquest, at the conquest, and after. *Id.* fol. 7.

CONQUEREUR. L. Fr. In Norman

and old English law. The first purchaser of an estate; he who first brought an estate into his family. *Grand Coust. Gloss.* c. 25, p. 40. 2 *Bl. Com.* 243. *Id.* 48. *Le premier conquereur des trois cantrefes de la tere de Brecknoch estoit Bernard de Nefmarche, Norman*; the first purchaser of the three cantrefes of the land of Brecknock was Bernard of Newmarch, a Norman. 1 *Mon. Angl.* 319 b. *Blount.*

**CONQUEROR.** [L. Fr. *conquereur*; L. Lat. *conquæstor, conquistator*, qq.v.] In old English law. The first purchaser of an estate; he who brought it into the family owning it. 2 *Bl. Com.* 242, 243. Clearly formed from the L. Fr. *conquereur*, (q.v.) According to Blackstone, William the Norman was called "The Conqueror," to denote that he was the first of his family who acquired the crown of England. 2 *Bl. Com. ub. sup.* See *Conquest*.

**CONQUEROR.** Lat. In old pleading. I complain. Conqueror *quod talis mihi injuste detinet—talem rem*; I complain that such a one unjustly detains from me such a thing. An old form of declaring. *Bract.* fol. 102 b. *Si tenens conqueratur*; if the tenant complain. *Id.* fol. 156 b.

*Conquerentes*; plaintiffs, parties complaining. *Stat. Marlbr.* c. 30.

**CONQUEST.** [L. Lat. *conquæstus, conquistatio*.] In feudal and Scotch law. Purchase or acquisition; any means of acquiring an estate out of the common course of inheritance. *Craig de Jur. Feod.* lib. 1, tit. 10, § 18. *Dalrymple, Feuds*, 210. 1 *Kames' Equity*, 210. *Ersk. Inst.* b. 3, tit. 8, § 14. 2 *Bl. Com.* 242. *Id.* 48.

An estate itself, so purchased or acquired. Otherwise termed *acquest*. 1 *Reeves Hist. Eng. Law*, 29. In Scotch law, property acquired by a man during marriage was called *conquest*, in contradistinction to property which he succeeded to as heir to an ancestor, or executor to a person deceased. *Ersk. Inst.* b. 3, tit. 8, § 43.

According to Sir W. Blackstone, (who is followed by Mr. Stephen,) the term *conqueror* was originally applied to William I., and *conquest* to his mode of acquiring the crown of England, in the proper feudal sense of those terms, (as already explained, *supra*.) rather than with reference to the success of his arms. 2 *Bl. Com. ub. sup.* 1 *Steph. Com.* 355. This interpretation has been construed by some later writers into an unwillingness on the part of the commentator to acknowledge that the English

or Saxons were actually *conquered*, in [the modern and ordinary acception of the word; and some pains have been taken to prove this to have been the fact. 1 *Chitt. Bl. Com.* 48, note. Mr. Wharton, in his recently published Law Lexicon, speaks of "the attempt to give to the word *conquest* the meaning of *acquisition* in a feudal sense," as a "mere idle ingenuity," and goes into a historical argument to show that "as applied to the Norman establishment," it "means, and literally was warlike subjugation by force of superior military tactics." *Wharton's Lex. voc. Tenure*. But, whatever may be said of the historical fact, the etymology of the term itself, and its acknowledged use in feudal, Norman, and early English law, demonstrate its original meaning to have been *acquisition*, without reference to the exercise of superior military force. This appears strikingly from the signification of the Lat. *conquirere*, its ultimate root,—to get together by diligent search; the idea of *subjugation* having no place in its composition.

From what cause, and by what process the term *conquest* came to lose its original, and acquire its modern sense, or, in other words, how and when it came to be disused in law, and exclusively adopted as a word in ordinary language, cannot now be easily explained. The change seems to have taken place before the time of Edward I.; *purchase* (Fr. *purchas*) being the word employed by Britton to express the same idea. *Britt.* cc. 33, 35, 36, 38. That *conquereur* continued to be used after the Norman invasion in its technical sense, appears from the passage already quoted under that word, from the *Monasticon Anglicanum*. In the Scotch law, on the other hand, no such change occurred, and the word has consequently come down to modern times in its full original sense as a term of jurisprudence. See *supra*. An "heir of conquest" is said to be so called "because his right of succession is confined to the subjects which the ancestor himself had *acquired* or *conquished* by some singular title." *Ersk. Inst.* b. 3, tit. 8, § 14. See *Heir of conquest*.

**CONQUISITIO.** L. Lat. [from *conquirere*, q.v.] In feudal law. Acquisition. 2 *Bl. Com.* 242. See *Conquæstus, Conquest*.

**CONQUISITOR.** L. Lat. [from *conquirere*, q.v.] In feudal law. A purchaser, acquirer or conqueror. 2 *Bl. Com.* 242, 243.

**CONSANGUINEUS.** Lat. [from *con*, together, and *sanguis*, blood.] In old Eng-

lish law. Connected by blood; sprung from the same blood, (*eodem sanguine natus*;) of kin. *Co. Litt.* 157 a. Distinguished from *affinis*, (connected by marriage.) 2 *Steph. Com.* 285. *Ad propinquiores* consanguineum; to the next of kin. *Bract.* fol. 91.

A cousin, in the general sense of blood relative. *Reg. Orig.* 226. See *Cousin*. *Breve de consanguineo*; a writ of cousinage. *Id.* See *Cousenage*.

**CONSANGUINEUS FRATER.** Lat. In feudal law. A brother by the father's side, as distinguished from *frater uterinus*, a brother by the mother's side. 2 *Bl. Com.* 231.

**CONSANGUINITY.** [Lat. *consanguinitas*, from *consanguineus*, (q. v.); *cognatio*, from *con*, together, and *natus*, born.] Connexion of blood.\* Kindred or alliance in blood. 2 *Bl. Com.* 202. Relation by blood, as affinity is relation by marriage. 1 *Bl. Com.* 434. *Co. Litt.* 157 a.

The connection or relation of persons descended from the same stock or common ancestor, (*vinculum personarum ab eodem stipe descendit*.) 2 *Bl. Com.* 202. It is of two kinds; lineal and collateral. See *Lineal consanguinity*, *Collateral consanguinity*.

**CONSCIENCE, COURTS OF.** Courts, not of record, constituted by act of parliament in the city of London, and other towns, for the recovery of small debts; otherwise, and more commonly called *Courts of Requests*. 3 *Steph. Com.* 451. See *Requests*.

**CONSEILL.** L. Fr. In old French law. Counsel. *Assiz. de Jerus.* c. ix. xxvii.

**CONSEILLER.** L. Fr. In old English law. A counsellor. *Conseillers ou countours*; counsellors or countours. *Britt.* c. 52.

**SENSUAL CONTRACT.** In civil law. A contract formed by the mere consent (*consensus*;) of the contracting parties; such as marriage. *Pothier Contr. of Sale*, part 1, sect. 1. *Hallifax Anal.* b. 2, ch. 18. *Broom's Max.* 214.

**SENSUS.** Lat. [from *consentire*, to think together, to be of the same mind.] Consent. *Bract.* fol. 15 b, 16.

*Consensus est voluntas multorum ad quos res pertinet, simul juncta.* Consent is the united will of many to whom a thing belongs. *Dav. R.* 48. The words *simul juncta*, in this sentence, are treated and

translated in Branch's *Principia* and Wharton's *Lexicon* as referring to *res*, instead of *voluntas*, which has led in the latter work to the following singular translation;—"Consent is the will of the many, to whom the thing joined at the same time belongs."

**Consensus non concubitus facit matrimonium** (*nuptias*;) Consent, not lying together, constitutes marriage. 6 *Co.* 22. *Co. Litt.* 33 a. The consent of the contracting parties [that is, their mutual agreement to live together as husband and wife], and not carnal intercourse, forms the essence of the marriage contract. *Shelf. Marr. & Div.* 7. A contract to marry *per verba de presenti*, though not followed by cohabitation, amounts to a valid marriage. 2 *Kent's Com.* 87. 1 *Dow's P. Rep.* 148. 7 *Wendell's R.* 47. *Broom's Max.* 213.

This maxim is in substance, and almost in words, the same with that of the civil law. *Nuptias non concubitus, sed consensus facit.* *Dig.* 50. 17. 30. *Id.* 35. 1. 15.

**Consensus tollit errorem.** Consent removes error, [i. e. obviates its effect.] *Co. Litt.* 126 a. 2 *Inst.* 123. The acquiescence of a party who might take advantage of an error, obviates its effect. *Broom's Max.* 58. Thus, though a venue be wrongly laid, or a writ erroneously directed, if it be done or followed by the consent of the parties, and so entered of record, it shall stand; and no objection can afterwards be taken to it. *Cro. Eliz.* 664. *Co. Litt.* 126 a, and *Hargr. note.* 1 *Bing. N. C.* 68. On this maxim rests the doctrine of *waiver*. See *Waiver*.

**Non videtur consensus retinuisse, si quis ex præscepto minantis aliquid immutavit.** A person [under duress,] does not seem [is not considered,] to have retained his consent, though he may have made some change in the terms imposed on him by the party threatening.\* Although choice and election be a badge of consent, yet if the first ground of the act be duress, the law will not construe that the duress doth determine, if the party duressed do make any motion or offer. *Bacon's Max.* 89, *regula*, 22. Therefore, if a party menace me, except I make unto him a bond of 40*l.* and I tell him that I will not do it, but I will make unto him a bond of 20*l.* the law shall not expound this bond to be voluntary, but shall rather make construction that my mind and courage is not to enter into the greater bond for any menace, and yet that I enter by compulsion, notwithstanding, into the lesser. But if I will draw any consideration to myself, as if I had said, I will enter into your bond of 40*l.* if you will deliver me that piece of plate, now the duress

is discharged; and yet if it had been moved from the duressor, who had said at the first, you shall take this piece of plate and make me a bond of 40*l.*, now the gift of the plate had been good, and yet the bond shall be avoided by duress. *Id. ibid.*

The meaning of this maxim is made perfectly clear by the exposition of Lord Bacon. Its fundamental idea obviously is *variation* by the party duressed from the terms imposed by the duressor, which is wholly lost sight of in the following translations: "He does not appear to have consented, who changed any thing through the menaces of a party threatening." *Branch's Princ.* "He does not appear to have retained consent, if he have changed any thing through the menaces of a party threatening." *Wharton's Lex.*

**CONSENT.** [Lat. *consensus*, from *consentire*, to think together.] A concurrence of wills.\* *Pothier, Contr. of Sale*, part 2, sect. 1, art. 3. See *Consensus*. Consent is an act of reason, accompanied with deliberation, the mind weighing as in a balance, the good or evil on each side. 1 *Story's Equity Jurisp.* § 222. The consent of parties, which is of the essence of the contract of sale, consists in a concurrence of the will of the seller to sell a particular thing to the buyer for a particular price, and of the buyer to buy of him the same thing for the same price. *Pothier, ubi sup.* See *Consensus*, and the maxims *ibid.*

**CONSENTIRE.** Lat. [from *con*, together, and *sentire*, to think.] To consent; to think with another; to have, or be of the same mind; to agree to, or with.\*

*Non consentit qui errat.* He who errs does not consent. *Bract. fol. 44.* Consent given under the influence of error is not valid.\* If consent be obtained by meditated imposition, circumvention, surprise or undue influence, it is to be treated as a delusion, and not as a deliberate and free act of the mind. 1 *Story's Eq. Jurisp.* § 222.

**CONSENT RULE.** In practice. A stipulation in the form of a rule, which a defendant in an action of ejectment enters into at the time he enters an appearance, in which he specifies for what premises he intends to defend, and also undertakes to confess upon the trial, not only the fictitious lease, entry, and ouster mentioned in the declaration, but that he (if he defend as tenant, or if he defend as landlord, then that his tenant,) was at the time of the service of the declaration in the possession of such premises; and that if, upon the

trial the defendant shall not confess such possession, as well as lease, entry and ouster, whereby the plaintiff shall not be able further to prosecute his suit against the defendant, then no costs shall be allowed for not further prosecuting the same, but the defendant shall pay the taxed costs to the plaintiff. This is the present form of the rule in England. *Chitt. Archb. Prac.* 750. *Archb. New Prac.* 323. 3 *Steph. Com.* 673.

**CONSEQUENTIAL DAMAGES.** Damages following an act, but not the direct and immediate result of it.\* 3 *Bl. Com.* 153. 3 *Steph. Com.* 462.

**CONSEQUENTS.** In Scotch law. Things which follow, usually by implication of law.\* A commission being given to execute any work, every power necessary to carry it on is implied. 1 *Kames' Equity*, 242.

**CONSERVATOR.** Lat. [from *conservare*, to preserve.] A protector, preserver or maintainer. *Whishaw.* See *infra*.

An arbitrator, or umpire. *Kennett's Par. Ant.* 513. *Cowell.*

**CONSERVATOR OF THE PEACE.** [Lat. *conservator vel custos pacis.*] A preserver or keeper of the public peace.

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There were formerly, in England, two kinds of conservators of the peace; (1), those who had this power annexed to other offices which they held, and (2), those who had it merely by itself, and were thence named *custodes* or *conservatores pacis*. Those that were so *virtute officii* still continue, such as judges, sheriffs, coroners and constables, within their respective jurisdictions. Those that were, without any office, simply and merely conservators of the peace, either claimed that power by prescription, or were bound to exercise it by the tenure of their lands, or lastly, were chosen by the freeholders in full county court before the sheriff. The election of these officers was taken from the people, and given to the king in the reign of Edward III.; but they continued to be called *conservators*, wardens, or keepers of the peace, till the statute 34 Edw. III. c. 1, gave them the power of trying felonies, when they acquired the more honorable appellation of *justices*.\* *Lambard. Eirenarch.* 12—23. 1 *Bl. Com.* 349—351. 3 *Steph. Com.* 38, 39. *Bacon's Use of the Law*, 11, 12. See *Justices of the peace*.

**CONSERVATOR OF TRUCES AND SAFE-CONDUCTS.** [L. Lat. *conservator induciarum et salvozum regis conductuum*.] An officer anciently appointed in every port in England, whose duty was to inquire of all offences done against the king's truce and safe conducts, (such as the breaking of truces and safe conducts, and abetting and receiving the truce breakers, which were declared to be treasons. *Stat. 2 Hen. V. st. 1, c. 6.* 4 *Bl. Com.* 69.) *Termes de la ley.* *Cowell*. These offences, when committed at sea, they were empowered to hear and determine according to the ancient marine law, then practised in the admiral's court; when committed within the body of a county, to determine, with two men learned in the law of the land, according to that law. 4 *Bl. Com.* 69. Their powers were afterwards given by statute 29 Hen. VI. c. 2, to the lord chancellor associated with either of the chief justices. And see *Stat. 31 Hen. VI. c. 4*, which is still in force. 4 *Bl. Com.* 70. 4 *Steph. Com.* 245.

**CONSIDERATIO CURIÆ.** Lat. The consideration of the court; that is, the judgment of the court, implying deliberation and study. A phrase often used in the old books, statutes and pleadings. *Stat. Marlbr. c. 1.* *Ad audiendum considerationem curiæ*; to hear the judgment of the court. *Bract. fol. 383 b.*

**CONSIDERATION.** [Lat. *consideratio, causa*; Fr. *causé*.] In the law of contracts. The material cause of a contract, without which no contract is binding. *Termes de la ley.* *Cowell.* *Dyer*, 336 b. *Plowd.* 309. *Dig. 2. 14. 7. 1, 2.* *Code Civil*, liv. 3, tit. 3, sect. 4, § 1131. *Smith on Contracts*, 88, note. 2 *Ad. & Ell. N. S.* 851. Otherwise defined or described as follows:

The reason which moves the contracting party to enter into the contract. 2 *Bl. Com.* 443.

The thing given in exchange for the benefit which is to be derived from a contract; the compensation, *quid pro quo*, or equivalent, answering to the *permutatio* of the civil law, or more closely perhaps to the Gr. *συνάλλαγμα*; something mutually or reciprocally interchanged, though not necessarily of equal value.\* 2 *Bl. Com.* 444. 2 *Steph. Com.* 112. *Gravina*, lib. 2, § 12. *Cowell.* 2 *Kent's Com.* 463.

The price or motive of the contract. 2 *Bl. Com.* 443, 444. 1 *Archb. Nisi Prius*, 3.

The inducement to the contract. 2 *Kent's Com.* 463.

Any benefit accruing to him who makes the promise, or any loss, trouble or disad-

vantage undergone by, or charge imposed upon him to whom it is made. *Smith on Contracts*, 87, 88. 2 *Kent's Com.* 465. 1 *Archb. N. Prius*, 14, 15. *Broom's Max.* 341. See *Good consideration*, *Valuable consideration*, *Express consideration*, *Implied consideration*, *Executed consideration*, *Executory consideration*.

**CONSIDERATUM EST.** Lat. (It is considered.) In practice. The style of judgments in actions at law, [or the emphatic words in which they were entered on record,] implying that the judgment is not that of the court, but the act of the law, pronounced and declared by the court, after due deliberation and inquiry. 3 *Bl. Com.* 396. *Co. Litt.* 39 a. 1 *Ld. Raym.* 147, 148. *Consideratum fuit*; it was considered. *Bract. fol. 85.*

**CONSIDERATUR.** L. Lat. It is considered. Held to mean the same with *consideratum est*. 2 *Stra.* 874.

**CONSIGN.** [from Lat. *consignare*, to seal.] In mercantile law. To send or transmit goods to a merchant or factor for sale.\* The radical meaning of the word seems to be, to deliver or transfer, as a charge or trust. *Webster*.

**CONSIGNEE.** In mercantile law. The person to whom goods are consigned, shipped or otherwise transmitted for sale.\* 2 *Kent's Com.* 540. 3 *Id.* 207, 215, 221. *Tomlins*.

**CONSIGNMENT.** In mercantile law. The transmission of goods to a consignee for sale. 3 *Kent's Com.* 216. In mercantile usage, the goods themselves.\*

**CONSIGNOR.** In mercantile law. The person by whom goods or merchandise are consigned or shipped; the shipper.\* 2 *Kent's Com.* 543. 3 *Id.* 207, 215. *Abbott on Ship.* [326] 403.

**CONSILE, Conseil.** See *Counsel*.

**CONSILIARIUS.** Lat. [from *consilium*, q. v.] A counsellor or councillor. *Consiliarius vel advocatus*; counsellor or advocate. *Bract. fol. 185.* *Consiliarius et peritus in lege*; counsellor and learned in the law. *Cro. Jac.* 90. *Consiliarius vel narrator*; counsellor or countor. *Bract. fol. 412.*

**CONSILIUM.** Lat. Counsel; advice. *Pro consilio impendendo*; for counsel to be given. *Dyer*, 162 a. *Pro consilio impen-*



so ; for counsel given. *Id.* 65 a. *Consilia multorum requiruntur in magnis*; the counsels of many are required in important matters. 4 *Inst.* 1.

Counsel ; (an advocate.) 5 *Co.* 20.

In old practice. An impanance. 4 *Bl. Com.* 355, note (z).

**CONSIMILI CASU.** L. Lat. (In a like case.) In old English practice. The name of a writ of entry which lay where a tenant by the curtesy, or tenant for life, aliened in fee, or in tail, or for another's life. It was brought by him in the reversion against the party to whom such tenant so aliened to his prejudice, and in the tenant's life time. *Termes de la ley.* F. N. B. 206. *Roscoe's Real Act.* 95. *Cowell.* It derived its name from the circumstance of being framed under the authority of the statute of Westminster 2, c. 24, which provided that "as often as it shall happen in chancery that in one case a writ is found, and in a like case, (in consimili casu,) falling under the same right, and requiring like remedy, no writ is to be found, the clerks of the chancery shall agree in making a writ," &c. 3 *Bl. Com.* 50. *Steph. Pl.* 7.

**CONSISTORIUM.** Lat. The state council of the Roman emperors. 1 *Mac-keld. Civ. Law*, 39, § 49.

A consistory, (q. v.)

**CONSISTORY.** [Lat. *consistorium.*] A session, assembly or council of ecclesiastical persons. *Blount.*

The highest council of state in the papal government. *Encycl. Amer.*

A spiritual court; otherwise called the consistory court, (q. v.)

**CONSISTORY COURT.** In English ecclesiastical law. A court held by every diocesan bishop in their several cathedrals, for the trial of all ecclesiastical causes arising within their respective dioceses; and also for granting probates and administrations. 3 *Bl. Com.* 64. 3 *Steph. Com.* 430, 431. 1 *Wooddes. Lect.* 86. It is held before the bishop's chancellor, or his commissary. *Hallifax Anal.* b. 3, ch. 10, nu. 12.

**CONSOBRINI, Consobrina.** Lat. In the civil law. Cousins german, in general; brothers' and sisters' children, considered in their relation to each other. *Consobrinus*, a male cousin. *Consobrina*, a female cousin. *Inst.* 3. 2. 1. *Id.* 3. 6. 2. *Cooper's Notes, in loc.*

In a stricter sense, cousins who are the children of two sisters, *quasi consororini*; (*qui ex duabus sororibus progenerantur.*)

*Inst.* 3. 6. 2. Cousins, when they are the sons of brothers, are also called *fratres patruales*; when the daughters, *sorores patruales.* *Inst.* 3. 2. 1. *Id.* 3. 6. 2. *Cooper's Notes, in loc.*

**CONSOLATO DEL MARE.** Ital. [Fr. *consulat de la mer.*] The consulate of the sea. The title of a collection of European sea laws, now generally considered the most ancient extant. As to its origin, different opinions have been entertained by the most learned jurists; some, with Grotius and Emerigon, ascribing it to the ancient kings of Arragon; others contending, with Azuni, that it was framed at Pisa, in Italy. The precise date of its compilation is not known, but it seems to be certain that it was completed and in force as early as the eleventh century, and that during a succession of the ages that followed, it was received and obeyed as law by all the nations of Southern Europe. It has formed the basis of most of the subsequent collections of maritime laws, and is supposed to have still the force of law in the tribunals of Italy. 1 *Duer on Ins.* Introd. Discourse, lect. ii. 3 *Kent's Com.* 10—12. Story, J., 3 *Story's R.* 465, 479.

**CONSOLIDATED FUND.** The great public fund of the United Kingdom of Great Britain and Ireland, comprising the produce of customs, excise, stamps, and several other taxes, added to some small receipts from the royal hereditary revenue; and constituting almost the whole of the public income of the united kingdom.\* 2 *Steph. Com.* 590. There were formerly three capital funds in existence; the aggregate fund, the general fund, and the South Sea fund. The consolidation of these into one, in the year 1787, on the new arrangement of the public accounts, gave the name to the new fund. *Id.*

**CONSOLIDATION.** [Lat. *consolidatio.*] In ecclesiastical law. The combination and union of two benefices in one. *Stat.* 37 *Hen. VIII.* c. 21. *Cowell, voc. Union.*

In the civil law. The union in the same person of the possession or profit (*usus fructus*) of lands, with the property (*proprietas.*) *Termes de la ley.* *Cowell.* See *Unity of possession.*

**CONSOLIDATION.** In practice. The combination of several actions into one; or of several causes of action of the same nature in one declaration.\* If two or more actions at law be brought by the same plaintiff, at the same time, against the same

defendant, for causes of action which may be joined, the court, on the motion of the defendant, will order them to be consolidated. 2 *Arch. Pr.* 198. 1 *Tidd's Pr.* 614. 1 *Burr. Pr.* 411.

**CONSOLIDATION RULE.** In practice. A rule made, on application of the defendants, and with the consent of the plaintiff, where several actions are brought on the same policy of insurance, by which the plaintiff's proceedings are stayed in all the actions except one, upon the defendants' undertaking to be bound by the verdict in that action, and to pay the amount of their several subscriptions and costs, in case a verdict shall be given therein for the plaintiff. 1 *Tidd's Pr.* 614. *Chitt. Arch. Pr.* 966.

**CONSORTIUM.** Lat. [from *consors*, a partner, from *con*, together, and *sors*, a lot.] In the civil law. A union of fortunes; one of the names of lawful marriage. *Cooper's Justin. Inst. Notes*, \*420.

A union of several persons as parties in an action. 1 *Mackeld. Civ. Law*, 197, Kaufmann's Note.

In old English law. Company; society. *Moor*, 817.

In pleading. The company or society of a wife. See *Per quod consortium amisit*.

**CONSPIRACY.** [Lat. *conspiratio*.] In criminal law. An agreement or combination between two or more persons, falsely to indict, or procure the indictment of another. This is the meaning of the term as used in the statute 33 *Edw. I. st. 2*; and still retained as descriptive of one species of the offence. 4 *Bl. Com.* 136. 4 *Steph. Com.* 265. 2 *N. Y. Rev. St.* [691.] 577, § 8, subd. 2.

In a more general sense, any confederacy of two or more persons to injure an individual, or do any other unlawful act or acts prejudicial to the community. *Steph. Crim. Law*, 70.—A combination or agreement between several persons, to carry into effect a purpose hurtful to some individual, or to particular classes of the community, or to the public at large. 4 *Steph. Com.* 265, and note. 4 *Chitty's Bl. Com.* 136, notes. 2 *N. Y. Rev. St. ub. sup.*

To constitute an indictable conspiracy, there must be a combination of two or more persons, by some concerted action, to accomplish some criminal or unlawful purpose, or to accomplish some purpose not in itself criminal or unlawful, by criminal or unlawful means. 4 *Metcalf's R.* 111. But see 4 *Steph. Com. ub. sup.* The conspiracy

itself constitutes the offence, though the purpose of it be not effected. *Wharton's Amer. Crim. Law*, 486. *Lewis' U. S. Crim. Law*, 206. *U. S. Dig. Conspiracy*.

**CONSPIRATIONE.** See *De Conspiratione*.

**CONSPIRATORS.** Persons guilty of the offence of conspiracy. Defined by the statute 33 *Edw. I. st. 2*. 2 *Reeves' Hist. Eng. Law*, 242. See *Conspiracy*.

**CONSTABLE.** [Fr. *connestable*; L. Lat. *constabularius*, *constabulus*, *conestabulus*, q. v.] A public civil officer, whose proper and general duty is to keep the peace within his district, though he is frequently charged with additional duties. 1 *Bl. Com.* 356. See *infra*. Constables are of two kinds, high and petty.

*High constables.* (*capitales constabularii*;) in England, are officers appointed in every hundred or franchise, whose proper duty seems to be, to keep the king's peace within their respective hundreds. 1 *Bl. Com.* 356. 3 *Steph. Com.* 47. *Wilcock Off. Constable*, 1, 23. They are also, by various statutes, charged with other duties, such as that of serving precepts and warrants on certain occasions, and the returning of lists of jurors. 3 *Steph. Com.* 47.

*Petty constables* (*subconstabularii*) are inferior officers in every town and parish, subordinate to the high constable of the hundred, whose principal duty is the preservation of the peace, though they also have other particular duties assigned to them by act of parliament, particularly the service of the summonses and the execution of the warrants of justices of the peace. 1 *Bl. Com.* 356. 3 *Steph. Com.* 47, 48.

The high constable has the same duties to discharge in all parts of his hundred, as well within as out of the precincts of petty constables, as each petty constable has within his precinct. *Wilcock Off. Constable*, 23.

In the United States, constables are town and city officers, with powers similar to those of the constables of Great Britain. Besides their general common law office of conservators of the peace, they have other duties specially assigned them by statute, such as the execution of the process of justices' courts, and, in some cases, of process issued by other judicial officers; attending the sittings of courts, keeping juries, &c. High constables are also appointed in cities as chiefs of the constabulary force, and in some cases, also, with a certain rank and duty as executive officers of the corpora-

tion.\* See *U. S. Digest, Supplement & Ann. Digest, Constable.*

Few terms of the English law have undergone a greater change in signification, since their first introduction, than this of *constable*, which is generally supposed to be derived, (through the Fr. *conestable*, Lat. *constabularius*.) from *comes stabuli*, the title of an officer of the Roman empire, corresponding with that of the modern *master of the horse*. 1 *Bl. Com.* 355. See *Constabularius*. It was introduced into England by the Normans, who applied it first to that high officer of state created after the conquest, under the title of *Constable of England*, (q. v.) It was afterwards applied to various subordinate officers, uniting civil with military duties, such as the keepers of castles, &c.; and finally, to those officers of the peace in hundreds and tithings, which are considered the origin of the modern high and petty constables. The statute of Winchester, 13 Edw. I. (now repealed by 7 & 8 Geo. IV. c. 27.) after requiring every man to "have in his house harness for to keep the peace," and specifying the kind of armour, proceeds to ordain that "in every hundred and franchise two constables shall be elected, to make the view of armour." c. 6. This statute is considered by Blackstone and Spelman, as having first created the office of constables of hundreds, or high constables, as they are now generally termed. 1 *Bl. Com.* 355, 356. *Spelman*, voc. *Constabularius*. See 4 *Inst.* 267. Petty constables are considered by the same authors as having been first instituted about the reign of Edward III. These opinions, however, have been disputed, and the constable of the hundred has been held to have been an officer at the common law, before the statute of Winchester. Powell, J., 1 *Ld. Raym.* 1192, 1193. Holt, C. J., *Id.* 1195. 1 *Salk.* 175. The same has been held as to the petty constable. 4 *Inst.* 267. Constables, indeed, are expressly mentioned in *Magna Charta*, and by Bracton, in connexion with the sheriff, coroner and other royal bailiffs. *Magna Charta*, c. 17. *Bract.* fol. 337. But these are supposed to have been constables of castles. 2 *Inst.* 31. So the constable is mentioned in the statute of Westminster 1, c. 15; though Britton, whose work was written about the same time, in enumerating the county officers under the sheriff, viz. hundredors, serjeants and bedels, says nothing of the constable. *Britt.* fol. 2. It is the opinion of a late writer on this subject that there was a series of officers, appointed under the title of

*constable* soon after the Norman conquest, with a regular gradation of rank, from the lord high constable to the constable of the smallest franchise, uniting military with civil powers; and that they were, in each case, commanders of the levies of their particular districts, in case of domestic tumults, or the incursions of robbers. *Willcock's Office of Constable*, Introd. On the whole, there seems little doubt that the office of constable, though partaking of many of the characteristics of the ancient Saxon peace officers, (the tithing man being little distinguishable from the petty constable,) is essentially of Norman origin. The military or half military character which has always belonged to it in England, (a decidedly Norman feature, as well as the name itself,) makes strongly in aid of this opinion. Under the statute of Winchester, it seems to have differed little from that of a modern militia inspector, and it is worthy of remark that the enrolment of the militia, providing them with quarters when called out, &c., form to this day in England part of the duties of a constable. *Stat. 52 Geo. III.* c. 38. *Wilcock Off. Constable*, 76, 78, 80. Dr. Wooddesson concurs in the opinion of Blackstone that the officers now called constables derived that appellation at or after the statute of Winchester; although it is his conclusion that the office itself, in substance and effect, subsisted from immemorial antiquity in the English laws. 1 *Wooddes. Lect.* 152, 153. The opinion of Sir W. Blackstone, that the modern office unites in itself those of the Saxon tithingman, and Norman constable, (properly so called,) is the one which perhaps best reconciles the different views which have been taken on this point of origin. 1 *Bl. Com.* 356. See *Tithingman*.

CONSTABLE OF ENGLAND. [L. Lat. *constabularius Angliæ*; L. Fr. *constable d'Angleterre*.] Called also LORD HIGH CONSTABLE. A high officer of state, established in England on the Norman Conquest, whose duties partook both of a military and civil character. He was at the same time commander in chief of the forces of the kingdom, and keeper of the peace of the nation. *Crabb's Hist. Eng. Law*, 101. *Cowell. Lambard*, cited *ibid.* He had judicial cognizance of all contracts touching deeds or feats of arms, (*facta armorum*), and of war out of the realm, and of all matters pertaining to arms or war within the realm, which could not be determined by the common law. *Spelman*, voc. *Constabularius*. He had also the power of trying for high treason, and the especial

right of regulating all trials by combat, tilts, tournaments, and other feats of chivalry. *Id.* 1 *Bl. Com.* 355. He was one of the great officers of state who sat in the *Aula Regis*: and, together with the lord marshal held also a separate court called the court of chivalry. 3 *Bl. Com.* 68. 4 *Inst.* 123.

The office of the Saxon *heretoch*, as a chief military leader, corresponded, in some respects, with this of constable; and the barbarous epithet *stallarius* was, according to Spelman, given to it in imitation of the continental term *constabularius*, being made up from a similar derivation, (Sax. *stall*, *stabulum*.) There is no doubt, however, that the office of constable of England was introduced by the Normans, being immediately derived from the similar office of constable of France, which was of high antiquity in that kingdom. *Spelman*, voc. *Constabularius*. *LL. Edw. Conf.* c. 35, cited *ibid.* It has been disused in England, except only upon great and solemn occasions, as the king's coronation and the like, ever since the attainder of Stafford, duke of Buckingham, under Henry VIII. 1 *Bl. Com.* 355.

CONSTABLE OF A CASTLE. [L. Lat. *constabularius castelli*.] In English law. An officer having charge of a castle; a warden, or keeper; otherwise called a castellan. *Spelman*, voc. *Constabularius*. *Bract.* fol. 69 b. *Crabb's Hist. Eng. Law*, 150. See *Castellan*. *Constabularius castri de Dover, et quinque portuum*. *Co. Litt.* 234 b. *Constabularius castri Dovorr, et custos quinque portuum*; Constable of Dover castle, and warden of the Cinque ports. *Reg. Orig.* 185 b. This is still an official title. Bracton mentions the constable of the tower of London. *Bract.* fol. 360 b, 361.

CONSTABULARIUS, CONSTABULUS, (called also *Constaulus*, *Conestabularius*, *Conestabulus*, *Conestablius*, *Conostabilus*, *Contostaulus*, *Conestalus*, *Comistabilis*, *Comestabulus*.) L. Lat. A master of the horse; (*præfectus stabuli*.) *Spelman*. A commander in chief of horse; (*præfectus equitum*.) *Id.*

A commander of any troop of horse; (*omni turmae equestris præfectus*.) *Id.*

A commander of foot; (*turmae pedestris*;) a centurion or captain; (*capitaneus*.) *Id.*

A naval commander; (*officialis marinus*.) *Id.* and voc. *Admiralius*.

An officer having charge of military affairs; (*qui rem militarem curabat*.) *Id.* See *Reg. Orig.* 88.

An officer assigned to guard or keep any place; (*qui loco alicui præsidio dabatur*;) as a castle or town, &c. *Spelman*. *Bract.* fol. 69 b.

An officer whose military duties were connected with, or exercised in subservience to, the preservation of the public peace. Hence, (the military character being dropped,) the office of the modern constable.\* See *Constable*.

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This word is derived by Spelman through the Fr. *conestable*, Ital. *conestabile*, from the Lat. *comes stabuli*, an officer in the Roman empire who had charge of the imperial stable; the master of the horse; (*præfectus stabuli vel equorum*;) originally called *tribunus stabuli*. *Spelman*, voc. *Constabularius*. *Ammianus Marcellinus*, cited *ibid.* This latter title is supposed to have become changed into that of *comes stabuli*, soon after the time of Constantine, and the union of these two words into one to have taken place about the tenth century. *Constabulus* is used by Regino, an Italian writer at the beginning of the eleventh century, with the express admission of its being a corruption of *comes stabuli*. *Regino Chron.* lib. 2, apud *Spelman*. *Comestabulus* and *conestabulus* may have been previous forms of the word, but *constabularius* finally became the prevailing one. *Contostaulus*, *conestalus*, and *constaulus*, appear to be from the lower Greek *κοροσταυλος*, *κοροσταυλος* and *κοροσταυλος*.

The changes which the meaning of this word successively underwent, from the time of its first formation, may be seen in the definitions already given. Its prevailing sense on the continent was that of *military commander*, or leader, with which was blended, on its introduction into England, that of *custodian*, or *keeper of the peace*. A trace of the original office of the *comes stabuli* long survived in that of the Lord high constable of England, as supervisor of all feats of arms performed on horseback, and judge in the court of chivalry. See *Constable of England*.

CONSTAT. Lat. It is clear or evident; it appears; it is certain; there is no doubt. *Non constat*; it does not appear. *Constat de persona*; there is certainty as to the person; there is no doubt about the person. *Inst.* 2. 20. 29. 4 *Bl. Com.* 323. *Nihil facit error neminis cum de corpore constat*. An error in the name amounts to nothing when there is certainty as to the person. 6 *Co.* 65 b. 11 *Id.* 21.

CONSTAT. L. Lat. In English law.

A certificate which the clerk of the pipe and auditors of the exchequer make at the request of any person who intends to plead or move in that court for the discharge of any thing; and the purport of it is to certify what *appears* (*constat*) on record, concerning the matter in question. *Stat. 3 & 4 Edw. VI. c. 4. 13 Eliz. c. 6.*

An exemplification under the great seal of the enrolment of letters patent; so called from its initial word. *5 Co. 54. Co. Litt. 225 b.*

**CONSTITUCION.** L. Fr. The constitution or appointment of an attorney. *Britt. c. 126.*

**CONSTITUENT.** [L. Lat. *constituens*.] One who appoints or constitutes. The person appointing an attorney in fact is called his constituent. See *Reg. Orig.* 20, 21.

**CONSTITUERE.** Lat. To constitute or appoint. *Constituimus* (we have constituted, or appointed,) was the emphatic word in the ancient commissions of the judges in England. *Bract. fol. 109—111.*

To put in one's place; to constitute or appoint an attorney. *Attornavi et in loco meo constitui C. de D.*; I have attorned and put in my place C. of D. *Reg. Orig.* 172. *Constitute* is still an emphatic word in letters of attorney.

To put or place; to make an appearance. *Partibus in judicio constitutis*; the parties being placed (or having appeared) in court. *Bract. fol. 257.*

To establish or ordain. See *Constitutio*.

To undertake or engage to pay a debt. *Inst. 4. 6. 9. Dig. 13. 5.* See *Constitutum*.

**CONSTITUTA PECUNIA.** See *Constitutum*.

**CONSTITUTIO.** Lat. [from *constituere*, to establish.] In the civil law. An imperial ordinance or constitution, distinguished from *Lex*, *Senatus-consultum*, and other kinds of law, and having its effect from the sole will of the emperor. *Quod principi placuit legis habet vigorem. Quodcumque ergo imperator per epistolam constituit, vel cognoscens decrevit, vel edicto præcepit, legem esse constat. Hæc sunt quæ constitutiones appellantur.* That which has pleased the sovereign has the force of law. Whatever, therefore, the emperor has ordained by rescript, or decreed upon the hearing of any matter, or commanded by edict, is evidently law. These are what are called *constitutiones*. *Inst. 1. 2. 6. Cooper's Notes, in loc. Heinæc. Elem. Jur. Civ. lib. 1, tit. 2, § 51.*

**CONSTITUTIO.** Lat. In old English law. An act, ordinance or statute; an establishment. *Stat. Marlbr. c. 11. Stat. Westm. 1, pr. Stat. de Bigamis, pr.* Bracton calls the statute of Merton, *constitutio de Merton*. *Bract. fol. 227.*

**CONSTITUTION.** [Lat. *constitutio*.] Establishment; appointment. See *Constituere*.

An established form of government. *1 Bl. Com. 50. 1 Steph. Com. 32.* A system of fundamental rules, principles and ordinances for the government of a state or nation. *Webster.*

In English law. A public act or ordinance, especially such as related to ecclesiastical matters. *Crabb's Hist. Eng. Law, 248. 2 Reeves' Hist. Eng. Law, 78.* See *Provincial constitutions, Legatine constitutions.*

**CONSTITUTUM.** Lat. [from *constituere*, to undertake or engage.] In the civil law. A promise or undertaking, (called *pactum prætorium*,) without any preceding stipulation, to pay money due either by the promisor or another for whom he became surety. *Dig. 13. 5. Heinæc. Elem. Jur. Civ. lib. 4, tit. 6, § 1158.* The action which lay upon such a promise was called *Actio de pecunia constituta*. *Id. Inst. 4. 6. 9.*

**CONSTRUCTIO.** Lat. Construction, (q. v.)

*Constructio legis non facit injuriam.* The construction of the law [a construction made by the law] works no injury. *Co. Litt. 183. Broom's Max. 259.* The law will make such a construction of an instrument as not to injure a party.

**CONSTRUCTION.** [Lat. *constructio*, from *construere*, to frame or put together.] Interpretation; explanation; the manner of understanding the arrangement of words or of understanding facts. *Webster.*

**CONSTRUCTIVE.** Made out or deduced by construction; implied, inferred, construed or interpreted by law; as *constructive fraud, constructive notice, &c.* The opposite of formal, actual, positive or expressed.

**CONSTRUCTIVE FRAUD.** Fraud inferred by law, as distinguished from positive, actual or intentional fraud: fraud in law, as distinguished from fraud in fact.\* *2 Kent's Com. 515, et seq. See Fraud.*

By *constructive frauds* are meant such contracts or acts, as, though not originating

in any actual evil design or contrivance to perpetrate a positive fraud or injury upon other persons, are yet, by their tendency to deceive or mislead other persons, or to violate public or private confidence, or to impair or injure the public interests, deemed equally reprehensible with positive fraud; and therefore are prohibited by law, as within the same reason and mischief as contracts and acts done *malo animo*. 1 *Story's Eq. Jurisp.* § 258.

**CONSTRUCTIVE LARCENY.** Larceny made out by construction, or inferred from the acts of a party, where the taking itself was not apparently felonious; as where he obtained the delivery of the goods *animo furandi*. See *Larceny*.

**CONSTRUCTIVE NOTICE.** Notice inferred by law, as distinguished from actual or formal notice; notice in law; that which is held by law to amount to notice. Actual notice to a party's attorney is constructive notice to the party himself. See *Notice*.

**CONSTRUCTIVE TRUST.** A trust raised by construction of law, or arising by operation of law, as distinguished from an express trust; a trust implied or inferred from circumstances; otherwise called an *implied* trust, and sometimes a *resulting* trust, (qq. v.) Thus, if an estate be purchased in the name of one person, and the consideration money belong to, or be paid by another, the land purchased will be subject to a trust for the person to whom the money belonged. 1 *Sand. Us.* 212. 1 *Steph. Com.* 346. Wherever the circumstances of a transaction are such that the person who takes the legal estate in property, cannot also enjoy the beneficial interest without necessarily violating some established principle of equity, the court will immediately raise a *constructive trust*, and fasten it upon the conscience of the legal owner, so as to convert him into a trustee for the parties who in equity are entitled to the beneficial enjoyment. *Hill on Trustees*, 116. 1 *Spence's Chancery*, 511.

**CONSUEUDINARIUS.** L. Lat. [from *consuetudo*, q. v.] In old English law. A ritual or book, containing the rites and form of divine offices, or the customs of abbeys and monasteries. *Whishaw*.

**CONSUEUDINES.** Lat. [pl. of *consuetudo*, q. v.] Customs. *Magna Charta*, c. 29.

**CONSUEUDINES FEUDORUM.** L. Lat. (The customs or customary laws of fiefs.) The title of the Book of Fiefs; usually annexed to the *Corpus Juris Civilis*. 3 *Kent's Com.* 496.

**CONSUEUDINIBUS ET SERVI-  
TIIS.** See *De consueudinibus et servitiis*.

**CONSUEUDO.** Lat. A custom or usage; a customary law; a law originating from usage; a law not written. *Bract.* fol. 1, 2. Lord Coke enumerates the following as different significations of this word:

The common law, (*consuetudo Angliæ*.) 2 *Inst.* 58.

Statute law. *Id. ibid.*

A particular custom, as gavelkind, borough English and the like. *Id. ibid.*

A rent or service due by tenure. *Id. ibid.*

A custom, tribute, imposition, toll, tax or charge. *Id. ibid.* *Co. Litt.* 58 b. But the proper Latin for this is *custuma*, (q. v.)

A subsidy granted by parliament. 2 *Inst.* 58. *Consuetudo* is one of the main triangles of the Laws of England. *Co. Litt.* 110 b.

*Consuetudo est altera lex.* Custom is another law. 4 *Co.* 21. *Consuetudo quandoque pro lege observatur, in partibus ubi fuerit more utentium approbata, et vicem legis obtinet.* Custom is sometimes observed as law, in parts where it has been habitually approved, and takes the place of law. *Bract.* fol. 2. *Consuetudo regni Angliæ est lex Angliæ.* The custom of the kingdom of England is the law of England. *Jenk. Cent.* 119.

*Consuetudo est optimus interpret legum.* Custom is the best interpreter of laws. 2 *Inst.* 18. This maxim is obviously derived from that of the civil law, the order of the words only being changed: *Optima est legum interpret consuetudo.* *Dig.* 1. 3. 37.

*Consuetudo loci est observanda.* The custom of a place is to be observed. *Litt. sect.* 169. 4 *Co.* 28 b. 10 *Id.* 140. *Broom's Max.* 416. A custom which has long prevailed at a particular place, obtains the force of law. *Id. ibid.*

*Consuetudo debet esse certa, nam incerta pro nullis habentur.* A custom ought to be certain, for uncertain things are held as nothing. *Davies' R.* 33.

*Consuetudo tollit (vincit) [privat] communem legem.* Custom takes away [overcomes] [supersedes] the common law. By the custom of gavelkind in England, a widow is entitled to a moiety of her husband's estate so long as she continues chaste and unmarried; and this custom she cannot

waive, and resort to her third part at common law. 1 *Roper on Husb. & Wife*, 351. *Co. Litt.* 33 b.

**Consuetudo ex certa causa rationabili iustitia privat communem legem.** A custom, grounded on a certain and reasonable cause, supersedes the common law. *Litt.* sect. 169. *Co. Litt.* 113. *Broom's Max.* 417.

**Consuetudo præscripta et legitima vincit legem.** A prescriptive and lawful custom overcomes the law. *Co. Litt.* 113. 4 *Co.* 21.

**Consuetudo contra rationem introducta potius usurpatio quam consuetudo appellari debet.** A custom introduced against reason ought rather to be called a usurpation than a custom. *Co. Litt.* 113.

**Consuetudo, licet sit magis auctoritatis, nunquam tamen præjudicat manifestæ veritati.** A custom, though it be of great authority, should never prejudice manifest truth. 4 *Co.* 18.

**Consuetudo semel reprobata non potest amplius induci.** A custom once disallowed cannot be again brought forward, [or relied on.] *Dav.* 33.

**CONSUL.** Lat. [from *consulere*, to consult.] In old English law. An ancient title of an earl. *Comites—qui etiam dici possunt consules, a consulendo, reges enim tales sibi associant ad consulendum.* Earls—who may also be called *consuls*, from *consulendo*, for kings associate such persons with them for the purposes of *consultation*. *Bract.* fol. 5 b. 1 *Bl. Com.* 227.

The word *consul* was used by the authors of the middle ages for *comes*, (count, or earl,) and the derivative word *consulatus* for *comitatus*; (the office or district of a *comes*; a county.) *Spelman*. It is mentioned in the laws of Edward the Confessor, (c. 12,) that what was then called *comitatus* was among the Britons in the time of the Romans called *consulatus*, and that those who were then called *vice comites*, were at the same early period called *vice consules*; their office being to supply the place of the *consul* in his absence. Mr. Hargrave is disposed to doubt this. *Harg. Co. Litt.* lib. 3, Note 20. The use of the term, however, as applied to the highest nobility in England, seems beyond question. Bracton mentions it as an appropriate (if not an ordinary) title in his day, and dwells upon its meaning as peculiarly expressive. *Bract. ub. sup.*

**CONSUL.** In commercial and international law. A public agent, appointed by a government to reside in a foreign country,

(and usually in sea ports,) to watch over its own commercial rights and privileges, and the commercial interests of its citizens or subjects.\* 1 *Kent's Com.* 41. A consul is not such a public minister as to be entitled to the privileges appertaining to that character, nor is he under the special protection of the law of nations. *Id.* 44. 1 *Chitty's Com. Law*, 48, 49 *et seq.* *Wheaton's Intern. Law*, 293. See *U. S. Dig. and Supplement*, Consul.

**CONSULTA.** L. Lat. [L. Fr. *counseille*.] In old English law. Provided for. Applied to a church that was full. *Cowell*.

**CONSULTATION.** In English practice. A writ, in the nature of a *procedendo*, whereby a cause, being removed by prohibition out of the ecclesiastical court to the king's court, [i. e. to one of the superior courts of law,] is returned thither again to be there determined. *Termes de la ley.* 3 *Bl. Com.* 114. 1 *Wooddes. Lect.* 93. 2 *Tidd's Pr.* 948. A similar writ has been used on prohibitions in some courts in the United States. 2 *Burr. Pr.* 184. See *Prohibition, Procedendo*.

This writ is said by Blackstone to be so called because upon deliberation and *consultation* had upon the matter removed by the prohibition, the judges find it to be ill founded, and therefore by this writ they return the cause to its original jurisdiction, to be there determined in the inferior court. 3 *Bl. Com.* 114. A more satisfactory explanation, however, of the origin of this writ, may be derived from a reference to the ancient practice as laid down by Bracton. Anciently, where a prohibition was issued to a spiritual court, if the judges to whom it was directed thought it well founded, they would decree a *supersedeas* of the proceeding. If they were in doubt whether to proceed in the cause or not, they usually consulted the king's justices, (*solent iudices aliquando iusticiarios consulere utrum procedere possent*) by what were termed *literæ consultationis*, to which the justices replied by writs of various forms, according to the case. *Bract.* 405 b, 406. 1 *Reeves' Hist. Eng. Law*, 456. Bracton gives several of these forms, which are rather in the nature of opinions than compulsory processes, and belong probably to a much earlier period than those given in the Register, (fol. 44—58.) It is not difficult to see how these obtained the name of writs of *consultation*, or upon consultation; the consultation itself being, as is clearly shown, not among the justices of the superior court, but between

the judges of the two courts, in the nature of a conference.

**CONSUMMATE.** Completed; as distinguished from *initiate*, or that which is merely begun. The husband of a woman seised of an estate of inheritance becomes, by the birth of a child, tenant by the curtesy *initiate*, and may do many acts to charge the lands, but his estate is not *consummate* till the death of the wife. 2 *Bl. Com.* 126, 128. *Co. Litt.* 30 a.

**CONTE.** Fr. [L. Lat. *narratio*.] In old pleading. A narrative or statement, in pleading. In the Norman law, it was used to signify any allegation of fact in a cause. *Steph. Pl. Appendix*, Note (56). Hence the word *count*, (q. v.)

A, or the county court; county day. See *Counte*.

An account. *Kelham*.

**CONTEK.** L. Fr. A contest, dispute, disturbance, opposition. *Britt.* c. 42. *Kelham*. *Conteckours*; brawlers; disturbers of the peace. *Britt.* c. 29.

**CONTEMPORANEA EXPOSITIO.** Lat. Contemporaneous exposition, or construction; a construction drawn from the time when, and the circumstances under which the subject matter to be construed, as a statute or custom, originated.

*Contemporanea expositio est optima et fortissima in lege.* Contemporaneous exposition is the best and strongest in the law. 2 *Inst.* 11. A statute is best explained by following the construction put upon it by judges who lived at the time it was made, or soon after.\* *Id. ibid.* and 136, 181. 10 *Co.* 70. 1 *Wooddes. Lect.* xxxi, xxxii. *Broom's Max.* 300. A contemporaneous exposition even of the constitution of the United States, practised and acquiesced in for a period of years, fixes the construction. 1 *Cranck's R.* 299. 1 *Kent's Com.* 464, 465. Construction may also be by acts as well as formal exposition, and hence the rule that ancient instruments may be construed by ancient usage, as constituting the best evidence of the intention of the parties. Lord Hardwicke, C. 2 *Atk.* 577. *Broom's Max.* 300. 2 *Smith's Lead. Cas.* 295.

**CONTEMPT.** [Lat. *contemptus*.] In practice. A disobedience to the rules, orders or process of a court of justice, or a disturbance or interruption of its proceedings.\* 4 *Bl. Com.* 285. Contempts are either direct, which openly insult or resist the powers of the court, or the persons of

the judges who preside there; or consequential, which, (without such gross insolence or direct opposition,) plainly tend to create an universal disregard of their authority. *Id.* 283, 284. Or they may be divided into such as are committed in the face of the court, (*in facie curiæ*), which are punishable by commitment and fine, and such as are committed out of court, which are punishable by attachment. 1 *Tidd's Pract.* 479, 480. 4 *Bl. Com.* 285, 286. 4 *Steph. Com.* 348—353. See 1 *Kent's Com.* 300, note. 1 *Hill's N. Y. Rep.* 154. *U. S. Dig. and Supplement*, Contempt. A party disobeying a rule or process of court is said to be in contempt. 4 *Steph. Com.* 19. See *Attachment*, *Commitment*.

**CONTENEMENT.** See *Contentenementum*.

**CONTENEMENTUM.** L. Lat. [from *con*, together, and *tenementum*, a tenement, or thing holden; L. Fr. *contenance*.] In old English law. A contenement; that which is held together with another thing; that which is connected with a tenement or thing holden; countenance, appearance, credit or reputation.\* See *infra*.

The precise meaning of this word is uncertain. It occurs in the following passage of Magna Charta. *Liber homo non amercietur pro parvo delicto, nisi secundum modum illius delicti: et pro magno delicto secundum magnitudinem delicti, salvo sibi contenmento suo; et mercator eodem modo, salva mercandisa; et villanus—salvo wainagio suo.* A freeman shall not be amerced for a small offence, but after the manner of the offence; and for a great offence, according to the magnitude of the offence, saving to him his *contenment*; and a merchant in the same way, saving his merchandise; and a villein—saving his wainage. *Magna Charta*, c. 14. *Spelman. Termes de la ley.* *Cowell*. The word occurs in the same form in Glanville and Bracton. *Glanv.* lib. 9, c. 8. *Bract.* fol. 116 b. Fleta calls it *continentia*. *Fleta*, lib. 1, c. 43. The French term is *contenance*, though *contenment* is used in the French statute of Westminster 1, c. 6.

The author of the *Termes de la ley* defines *contenment* to be "the freehold land that lies to [that is, adjoining] the tenement or dwelling-house that is in one's own occupation." Sir Henry Spelman translates *contentenementum* by the word *countenance*, on the analogy of the similarly formed word *manutenementum*, the Latin for *maintenance*; and, without any particular reference to land, defines it to be "the reputation or standing which a man has in the state," or "the outward appearance of his condition,"



(*estimatio et conditionis forma, quæ quis in republica subsistit.*) Lord Coke defines it to be "a man's countenance, [credit or reputation,] which he has together with [con] and by reason of his freehold," [*tenementum.*] 2 *Inst.* 28. *Blount.*

The most reasonable opinion to be deduced from the whole language of the provision of Magna Charta above quoted, seems to be, that this *contenementum*, mentioned as the characteristic property of the *free-man*, was a certain quantity of land exempted from amercement, on the ground of being necessary for its owner's support, like the wares of a merchant, or the wains of an agricultural bondman; land being in those days as essential to the creditable subsistence or countenance in society of the freeholder, (*liber homo*), as the other kinds of property named were to the subsistence of their respective owners. See 4 *Bl. Com.* 379. As to the particular description and quantity of land so exempted, the definition first above given seems to convey the most satisfactory interpretation, viz.: that it was limited to the *freehold land adjoining to*, and necessary to the reputable enjoyment of the party's dwelling.

**CONTENTIOUS JURISDICTION.** In English ecclesiastical law. That branch of the jurisdiction of the ecclesiastical courts, which is exercised upon matters in *controversy* between parties, as brought before the court by action, or other judicial process; in contradistinction to *voluntary* jurisdiction, which is exercised upon matters not opposed, or controverted, such as the granting of probate of wills, letters of administration, and the like.\* 3 *Bl. Com.* 66. This term is derived from the civil law. *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 17, § 1323.

To **CONTEST.** [Lat. *contestari*, to call to witness.] To defend a suit or other judicial proceeding; to dispute, oppose or resist a claim by course of law; to litigate, on the part of a defendant.\*

This word has entirely lost the original sense of its Latin form *contestari*, which, in the old Roman law, was applied primarily to the proceedings on the part of the *plaintiff*. When the plaintiff opened the proceedings before the prætor, by stating his cause of action, it was the custom for him to call upon the by-standers to act as witnesses, which act was called *antestari*, or *contestari*. *Festus de Verb. Signif. voc. Contestari.* Therefore it was always said of the plaintiff, *actor litem contestatur*, (the plaintiff contests the suit.) *Dig.* 46. 2. 28. See *Contestatio litis*.

**CONTESTATIO LITIS.** Lat. In the civil law. Contestation of suit. A narrative of the controversy made by both the parties to a suit before the prætor, including the plaintiff's statement of his claim, and the defendant's answer thereto. So called because originally conducted before witnesses, (*testes*.) *Hallifax Anal.* b. 3, ch. 9, num. 20. *Nov.* 96, c. 1. 1 *Mackeld. Civ. Law*, 205, § 203. This application of the term is retained in the canon law. *Id. ibid.* Kaufmann's note.

The legal quality which a suit assumed through the plaintiff's statement of his case, and the defendant's answer thereto. *Id. ibid.*

In early English law. The process of coming to an issue in pleading; the attainment of an issue, or the development of the point in controversy, by the alternate and contradictory statements of the respective parties; the issue itself, so attained or produced.\* *Steph. Pl. Appendix*, Note (39). *Fortescue de L.L. Angl.* c. 20. *Crabb's Hist. Eng. Law*, 216. More commonly termed *litis contestatio*, (q. v.)

The meaning of this term in the civil law seems to have been misapprehended by Blackstone, who makes it synonymous with *defence* in common law pleading. 3 *Bl. Com.* 296. *Steph. Pl. Appendix*, Note (39). In the practice of the ecclesiastical courts, however, (which he may have had in view,) contestation of suit has this signification of defence. *Hallifax Anal.* b. 3, ch. 11, num. 9. And *litis contestatio* has the same meaning in Germany. 1 *Mack. Civ. Law*, 205, Kaufmann's note.

**Contestatio litis eget termines contradictorios.** An issue requires terms of contradiction. *Jenk. Cent.* 117. To constitute an issue, there must be an affirmative on one side and a negative on the other. See *Issue*. A misapprehension of the meaning of *contestatio litis* in this maxim has led to the following unintelligible translation: "The evidence in a law-suit wants contradictory terminations." *Branch's Princ.* See *Whar-ton's Lex*.

**CONTINENTIA.** L. Lat. [from *continere*, to hold together.] In old English practice. Continuance or connexion. Applied to the proceedings in a cause. *Bract.* fol. 362 b.

**CONTINGENCY.** [from Lat. *contingere*, to happen.] An event that may or may not happen; a possibility.

**CONTINGENCY WITH A DOUBLE ASPECT.** A contingent remainder, (q. v.)

limited in substitution for another contingent remainder in fee simple. As if land be given to A. for life, and, if he have a son, then to that son in fee; and if he have no son, then to B. in fee. 1 *Steph. Com.* 302.

**CONTINGENT ESTATE.** An estate which depends for its effect upon an event which may or may not happen; as an estate limited to a person not *in esse*, or not yet born. 2 *Crabb's Real Prop.* 4, § 946.

**CONTINGENT LEGACY.** A legacy given to a person at a future uncertain time, that may or may not arrive; as "at his age of twenty-one," or "if," or "when he attains twenty-one." 2 *Bl. Com.* 513. 2 *Steph. Com.* 259. *Ward on Legacies*, 172.

**CONTINGENT REMAINDER.** A remainder limited to take effect either to a dubious and uncertain person, or upon a dubious and uncertain event, (and by which no present interest passes,) so that the particular estate may chance to be determined, and the remainder never take effect.\* 2 *Bl. Com.* 169.—A remainder limited either to an uncertain person, or upon an uncertain event; that is, to a person not *in esse*, or not ascertained, or upon an event which may not happen at all, or not happen until after the particular estate is determined. 1 *Steph. Com.* 301.—A remainder limited so as to depend on an event or condition which may never happen, or be performed; or which may not happen or be performed till after the determination of the preceding estate. *Fearne on Contingent Remainders*, 3. See 2 *Crabb's Real Prop.* 965, § 2330. 4 *Kent's Com.* 206, 208, note. 1 *Hilliard's Real Prop.* 496. See *Remainder*.

**CONTINGENT USE.** A use limited to take effect upon the happening of some future contingent event; as where lands are conveyed to the use of A. and B., after a marriage shall be had between them. 2 *Bl. Com.* 334. Otherwise called a *future use*, and sometimes, though inaccurately, a *springing use*. *Gilbert on Uses*, (by Sugden,) cited 2 *Chitty's Bl. Com.* 334, note. These are properly uses to take effect as remainders. *Id. ibid.* See 1 *Co.* 120; *Chadleigh's case*. 1 *Anderson*, 309. 4 *Kent's Com.* 237—247. 1 *Hilliard's Real Prop.* 523. See *Scintilla juris*.

**CONTINGERE.** Lat. To touch; to be connected with, or akin to. *Qui sese non contingunt*; who are not of kin to each other. *Bract.* fol. 28 b.

**CONTINUAL CLAIM.** [L. Lat. *continuum clameum*.] In old English law. A formal claim made by a party entitled to enter upon any lands or tenements, but deterred from such entry by menaces, or bodily fear, for the purpose of preserving or keeping alive his right. It was called *continual*, because it was required to be repeated once in the space of every year and day. It had to be made as near to the land as the party could approach with safety, and when made in due form, had the same effect with, and in all respects amounted to a legal entry. *Litt. sect.* 419—423. *Co. Litt.* 250 a. 3 *Bl. Com.* 175. Lord Coke calls it an entry in law, and says that it is as strong as an entry in deed. *Co. Litt.* 256 b. It has been lately abolished in England, by stat. 3 & 4 Will. IV. c. 27, § 11. 1 *Steph. Com.* 472.

**CONTINUANCE.** [L. Lat. *continuatio*.] In ancient practice. The adjournment of the proceedings in a cause from one day or one term to another.

The entry of such adjournment on the record, expressing the ground of the adjournment, and appointing the parties to reappear at the given day. *Steph. Pl.* 31, 81, (Am. ed. 1824.)

In modern practice. The postponement of the proceedings in a cause, as putting off a trial, &c. *U. S. Digest and Supplement*, Continuance and adjournment.

An entry made upon the record of a cause, for the purpose of formally continuing it in court; or rather, for the purpose of properly connecting the proceedings on the record.\* After declaration, and before issue joined, the proceedings are continued by *imparlance*, (q. v.); after issue joined, and before verdict, by *vicecomes non misit breve* (q. v.); and after verdict or demurrer, by *curia advisari vult*, (q. v.) 1 *Tidd's Pr.* 678. But some of these continuances are now disused, and in England they are entirely abolished. *Rules Hil. T.* 4 Will. IV.

The adjournments under the old practice were always *actually* made in each cause, by express direction of the court; and the entries of them upon record were made *in court at the time* of their being so directed, such entries being the only evidence the court would admit, of the manner in which the cause was disposed of. In order to estimate the peculiar propriety of these entries, we must refer to the two fundamental principles of the ancient practice; the first of which was, that the action must be under the *immediate supervision* of the court, throughout its *whole course*, from beginning

to end, and that no act could be done by the parties except when in court. Under this rule, the proceedings could not be suspended, and the parties dismissed even temporarily, without leave, nor could the parties come again into court, and the proceedings be resumed, without similar leave, by having a *day* previously *given* to them for that purpose. The second principle was, that the record must *follow the action*, keeping pace with every step of it, and accounting for every thing that was done during its progress, so as to show the proper reason for it, viz.: the direction of the court. A compliance with these two principles was facilitated by the circumstances of the parties personally appearing and pleading in open court, and of the record being a contemporaneous minute of the proceedings. See *Record*.

**CONTINUANDO.** L. Lat. (By continuing.) In old pleading. A word formerly used in a special declaration of trespass, where the plaintiff would recover damages for several trespasses in the same action. *Termes de la ley*. Thus, in trespasses of a permanent nature, where the injury was continually renewed, (as by spoiling or consuming the herbage with the defendant's cattle,) the declaration might allege the injury to have been committed *by continuation* from one given day to another, (which was called laying the *action* with a *continuando*,) instead of compelling the plaintiff to bring separate actions for every day's separate offence. 3 *Bl. Com.* 212. 1 *Ld. Raym.* 240, 824. The form of words was this: *continuando transgressionem prædictam, &c., a prædicto die, &c. usque talem diem*; (by continuing the aforesaid trespass, &c., from the day aforesaid, &c. to such a day;) and so including the last trespass. *Termes de la ley*. It has now, however, become obsolete. 3 *Chitt. Bl. Com.* 212, note.

**CONTRA.** Lat. [L. Fr. *contre*, *conter*.] Against, in opposition to, contrary to; on the opposite side; the contrary. A term constantly used in the reports to denote the opposition of counsel in a cause; the disallowance by the court of a point in argument, (*curia contra*); and the opposition of cases cited as establishing opposite doctrines.

**CONTRA BONOS MORES.** Lat. Against good morals. *Hob.* 167.

**CONTRA FORMAM FEOFFAMENTI.** L. Lat. (Contrary to the form of the feoffment.) In old English law. A writ that

formerly lay for a tenant, or his heir, enfeoffed of certain lands or tenements by charter of feoffment from a lord to do certain services, and especially suits to his court, who was afterwards distrained for more services than were mentioned in the charter. *Cowell. Termes de la ley. Reg. Orig.* 176.

**CONTRA FORMAM STATUTI.** L. Lat. (Against the form of the statute.) In old pleading. A phrase used at the conclusion of indictments laid on an offence created by statute, and of declarations on penal statutes, and held to be essential. 1 *Ld. Raym.* 150, 342, 343. 4 *Steph. Com.* 377. *Contra formam statuti in tali casu editi et provisi*; against the form of the statute in such case made and provided. *Towns. Pl.* 164. The use of the corresponding English phrase is still generally held to be essential, though the strictness of the rule on this point has been sometimes relaxed. 1 *Chitt. Pl.* 372, 373. 4 *Steph. Com. ub. sup.* 1 *Penn. St. R.* 154. 1 *Gilman's (Ill.) R.* 333, 340. *Lewis U. S. Crim. Law*, 644—686.

**CONTRA INHIBITIONEM NOVI OPERIS.** Lat. Contrary to the prohibition of a new work; contrary to the law prohibiting the erection of a new building. A phrase supposed to be derived from the title *De novi operis nuntiatione* in the civil law, (*Dig.* 39. 1,) and made use of by Blackstone to show, by the total misapprehension of its meaning, the gross ignorance of the terms of the civil law formerly manifested by the judges and counsel in the common law courts. 1 *Bl. Com.* 22, note (o).

**CONTRA JUS BELLI.** Lat. Against the law of war. 1 *Kent's Com.* 6.

**CONTRA JUS COMMUNE.** Lat. Against common right or law; contrary to the rule of the common law. *Bract.* fol. 48 b.

**Contra non valentem agere nulla currit præscriptio.** Against one who is unable to act no prescription runs. Statutes of limitations do not run against parties under disability. *Broom's Max.* 398, 399.

**CONTRA PACEM.** Lat. Against the peace. *Contra pacem domini regis*; against the peace of the lord the king. Phrases used in indictments, and in civil actions of trespass to signify that the acts complained of are committed against the peace of the

king or public peace. 1 *Chitt. Pl.* 388. "Against the peace of the people," or "commonwealth," is the phrase used in American law. *Lewis U. S. Crim. Law*, 644—686.

By the ancient law, in all peculiar jurisdictions, offences were said to be done *against his peace* in whose court they were tried; in a court leet, *contra pacem domini* (against the peace of the lord); in the court of a corporation, *contra pacem ballivorum* (against the peace of the bailiffs); in the sheriff's court or tourn, *contra pacem vice comitis*, (against the peace of the sheriff.) 1 *Bl. Com.* 117. *Bract.* fol. 145 b. See *Pax, Peace*.

**CONTRA VADIUM ET PLEGIUM.** L. Lat. Against gage and pledge. *Bract.* fol. 15 b.

**Contra veritatem lex nunquam aliquid permittit.** The law never suffers anything contrary to truth. 2 *Inst.* 252.

**CONTRABAND.** [from Lat. *contra*, against, and L. Lat. *bannum*, Ital. *bando*, an edict or proclamation.] Against law or treaty; prohibited.\* Goods exported from, or imported into a country against its laws. *Brande.*—Articles, the importation or exportation of which is prohibited by law. *P. Cyclopædia*.

**CONTRABAND OF WAR.** In international law. Goods which neutrals are prohibited from carrying during war to the belligerent parties; or which a belligerent has, by the law of nations, the right of preventing a neutral from furnishing to an enemy; and which, while *in transitu*, are liable to seizure and confiscation: such as arms and warlike stores, or what are termed *munitions of war*. 1 *Kent's Com.* 135, *et seq. Brande.* Provisions and other articles are sometimes contraband and sometimes not, according to circumstances. 1 *Kent's Com.* 138—142. It is the *usus bellici* (warlike purposes) which determine an article to be contraband. *Id.* 141. See *Wheaton's Intern. Law*, 509—529.

**CONTRACT.** [Lat. *contractus*, from *contrahere*, to draw together.] An agreement, upon sufficient consideration, to do or not to do a particular thing. 2 *Bl. Com.* 442. Otherwise variously defined as follows:

An agreement of two or more persons, upon sufficient consideration, to do or not to do a particular thing. 2 *Kent's Com.* 449.

An agreement in which a party under-

takes to do, or not to do a particular thing. Marshall, C. J., 4 *Wheaton's R.* 122, 197. A compact between two or more parties. *Id.* 6 *Cranch's R.* 87, 136.

An agreement between two or more persons to do or not to do a particular thing. Taney, C. J., 11 *Peters' R.* 420, 572.

A covenant or agreement between two parties, with a lawful consideration or cause. *West's Symbol.* part 1, lib. 1, § 10. *Cowell. Blount.*

A deliberate engagement between competent parties, upon a legal consideration, to do, or to abstain from doing some act. *Story on Contracts*, § 1.

An agreement or covenant between two or more persons, in which each party binds himself to do or forbear some act, and each acquires a right to what the other promises. *Encyclop. Amer. Webster.*

A mutual promise, upon lawful consideration or cause, which binds the parties to a performance. *Webster.*

The writing which contains the agreement of parties, with the terms and conditions, and which serves as a proof of the obligation. *Id.* This last is a distinct signification of the term.

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Mr. Stephen objects to the definition of Blackstone (*supra.*) 1, that the word *agreement* itself requires definition as much as contract; 2, that the existence of a *consideration*, though essential to the validity of a parol contract, forms properly no part of the idea; and 3, that the definition takes no sufficient notice of the *mutuality* which properly distinguishes a contract from a promise. 2 *Steph. Com.* 109, note. His own words of definition are: "A contract or agreement is where a promise is made on one side, and assented to on the other; or where two or more persons enter into engagement with each other, by a promise on either side." *Id.* 108, 109. As to the word *agreement*, it may be observed that some word of the kind seems essential to constitute the basis of any definition of contract that can be attempted. *Agreement* appears to be the translation of *conventio* in the civil law definition of the term, but falls short of the original (a coming together) in expressiveness, besides being liable to the objection of being a synonyme (or nearly so,) of the word which it is selected to define. Its use, however, has the support of the highest authority in ancient and modern law.—As to the idea of a *consideration*, it will be seen that it has been admitted into the best definitions of contract, both ancient and modern, (except that of Chief Justice

Marshall,) that have been framed; and its materiality to complete the idea of a contract is forcibly shown by the circumstance, that in that class of contracts (those by specialty or under seal) in which no consideration in fact is required, one is *always presumed* by law, the form of the instrument being held to *import* a consideration. See 2 *Kent's Com.* 450, note.—The third objection of Mr. Stephen to the definition of Blackstone, that it takes no sufficient notice of the *mutuality* of a contract, has apparently more weight; although, from Blackstone's own analysis of his definition, it would seem that he intended the idea of mutuality to be conveyed by, and implied in the word *agreement* itself, which, in another passage, he describes as "a mutual bargain or convention." 2 *Bl. Com.* 442. On the whole, notwithstanding these objections, the correctness of the definition of Blackstone remains essentially unimpeached, and it certainly enjoys the preference of the best authority. 2 *Kent's Com.* 449, 450. *Story on Contracts, ubi supra.*

The modern use of the word *contract*, as a generic term for all sorts of obligations, (including those created by record and by specialty,) though established on high authority, seems to be an undue extension of the proper meaning of the term, and has thrown much difficulty in the way of accurate definition. *Contract* is obviously derived (through *contractus* a term of the civil law) from *contrahere*, to draw together; importing the same radical idea with *agreement*, but with a stronger expression of *mutuality* in the use of the particle *con*. See *Agreement*. *Mutuality*, indeed, is of its very essence; not only mutuality of *assent*, implying free and deliberate action of the parties in coming into the contract, but mutuality of *act* also,—mutuality in the things agreed to be done by the contract; each party engaging to do, or not to do certain things. There is, in Lord Coke's phrase, (though not in the etymological sense in which he used it,) *act against act*, (*actus contra actum*.) 2 *Co.* 15. 7 *Man. & Gr.* 998, arg. and note. Thus, in the contracts of sale, bailment and for the performance of work, there are acts to be done by *both* parties; the one engaging to deliver the article or perform the work, and the other to pay the price, to use the article carefully, &c. So, in the contracts of partnership and marriage, the engagements are mutual. Engagements of this description, and no others, seem to come properly under the denomination of *contracts*. In a bond, on the other hand, there is none of this kind of mutuality; there is no act to

be done by the obligee to make the instrument binding; the obligation is all upon the side of the obligor. In a judgment, there is not only no mutuality of act, but not even mutuality of assent; the obligation being fastened upon the party by the law, whether he wills it or not; *judicium redditur in invitum*. Hence judgments have very properly been denied to be contracts, notwithstanding the doctrine of Blackstone, that a contract is in such cases implied. Lord Mansfield, 3 *Burr.* 1545. 1 *Cowen's R.* 316. Story, J., 1 *Mason's R.* 288. The impropriety of applying the term *contract* to bonds and judgments seems to be virtually admitted by Mr. Chitty, who uses *obligation* as an alternative word of description, in regard to both. *Chitty on Contracts*, 2, 4. See *Obligation*.

**CONTRACT OF SALE.** A contract by which one of the contracting parties, called the seller, enters into an obligation to the other, to cause him to have freely by a title of proprietor, a thing, for the price of a certain sum of money, which the other contracting party, called the buyer, on his part obliges himself to pay. *Pothier Contr. of Sale*, Prel. art.

**CONTRACTATIO.** See *Contractatio*.

**CONTRACTION.** The shortening or drawing together of a word by the omission of one or more letters, and sometimes of a syllable. This was a peculiar feature of the ancient *court hand* (q. v.) in which records were written in England; and was adopted in the earliest printed law books in Latin and French, such as Bracton, The Register, Britton, and others. The most common kind of contraction was by the omission of the letters *m* and *n* when they followed a vowel, the omission being denoted by a horizontal mark or dash over the latter. Various other arbitrary marks over and through the letters retained were employed, which cannot be represented without types cast expressly for the purpose. The following is a list of the principal contractions, as taken from the works above mentioned:

*a* for *am*; as *ta* for *tam*.  
*a* for *an*; as *ate* for *ante*.  
*e* for *em*; as *ide* for *idem*.  
*e* for *en*; as *metio* for *mentio*.  
*e* for *æ*; as *hec* for *hæc*.  
*i* for *im*; as *eni* for *enim*.  
*i* for *in*; as *iter* for *inter*.  
*o* for *om*; as *oni* for *omni*.  
*o* for *omn*; as *oes* for *omnes*.  
*o* for *on*; as *cotra* for *contra*.  
*u* for *um*; as *du* for *dum*.

*u* for *un* ; as *nuc* for *nunc*.  
*b'* for *bus* ; as *hæredib'* for *hæredibus*.  
*d'* for *dus* ; as *secund'* for *secundus*.  
*g'* for *gis* ; as *reg'* for *regis*.  
*i'* or *j'* for *ius* or *jus* ; as *cui'* for *cujus*.  
*l'* for *lus* ; as *mascul'* for *masculus*.  
*m'* for *mus* ; as *præcipim'* for *præcipimus*.  
*n'* for *nus* ; as *man'* for *manus*.  
*n* for *omin* ; *dno* for *domino*.  
*p* for *per* ; as *pactis* for *peractis*.  
*p* for *præ* ; as *pdictus* for *prædictus*.  
*p* for *pro* ; as *ppter* for *propter*.  
*p'* for *pus* ; as *corp'* for *corpus*.  
*q* and *qd* for *quod*.  
*q* for *quam* ; *quis* for *quamvis*.  
*r'* for *ris* ; as *tutor'* for *tutoris*.  
*r* for *rev* ; as *bre* for *breve*.  
*r* for *rum* ; as *alior* for *aliorum*.  
*r* for *rat* ; as *gria* for *gratia*.  
*t'* for *tis* ; as *dot'* for *dotis*.  
*t'* for *tus* ; as *rect'* for *rectus*.

The following are examples of double or more complex contractions :

*ateq* for *antequam*. *Bract.* fol. 204 b.  
*coem* for *communem*. *Reg. Orig.* 11.  
*coponi'* for *componitur*. *Bract.* fol. 222.  
*cro* for *crastino*. *Towns. Pl.* 141.  
*danu* for *damnum*. *Bract.* fol. 221.  
*epi, epo* for *episcopi, &c.* *Id.* fol. 249.  
*hmi* for *hujusmodi*. *Id.* fol. 180.  
*ibm* for *ibidem*. *Reg. Orig.* 97 b.  
*moledinu* for *molendinum*. *Bract.* fol. 221.  
*noia* for *nomina*. *Id.* fol. 212 b.  
*nrn* for *nostrum*. *Id.* fol. 249.  
*oibs* for *omnibus*. *Towns. Pl.* 21.  
*ostededu* for *ostendendum*. *Reg. Orig.* 70.  
*pd* for *prædictus*. *Id.* 10 b.  
*pedete* for *pendente*. *Id.* 77 b.  
*phibic* for *prohibitionem*. *Id.* 67 b.  
*scdm* for *secundum*. *Id.* 11, 76, 117.  
*tatu* for *tantum*. *Bract.* fol. 206.

The following are some of the principal contractions in French :

*aps* for *apres*.  
*ava* for *avera*.  
*auc* for *auncestre*.  
*bre* for *breve*.  
*c* for *ceo*.  
*do* for *done*.  
*e* for *en*.  
*ee* for *etre*.  
*getz* for *gentz*.  
*nre* for *nostre*.  
*p* for *per, par*.  
*p'c'q'* for *pur ceo que*.  
*pole* for *parole*.  
*sauk* for *saunk*.  
*s, so* for *son*.  
*tent* for *tenement*.  
*teps* for *temps*.  
*tme* for *terme*.  
*vs* for *vers*. *Britt. passim*.

**CONTRACTUS.** Lat. [from *contra*, here, q. v.] A contract. See *Contract*.

**Contractus ex turpi causa, vel contra bonos mores nullus est.** A contract founded on a base consideration, or against good morals is null. *Hob.* 167. This is the same in substance with the maxim of the civil law: **Pacta que turpem causam continent non sunt observanda.** Agreements upon a base consideration are not to be kept, or enforced. *Dig.* 2. 14. 27. 4.

**Contractus legem ex conventionione accipiunt.** Contracts take their law from the agreement of the parties. *Dig.* 16. 3. 1. 6.

**CONTRADICERE.** Lat. In old English law. To oppose; to refuse; to contradict. *Reddere contradicit*; refuses to return. *Reg. Orig.* 92 b.

**CONTRAFACERE.** L. Lat. [L. Fr. *contrefaire*.] In old English law. To counterfeit, or imitate. 2 *Ld. Raym.* 1469. Usually written *controfacere*, (q. v.)

**CONTRAFACTIO.** L. Lat. A counterfeiting. *Cowell. Blount.* Properly *controfactio*. See *Controfacere, Controfactura*.

**CONTRAHERE.** Lat. [from *con*, together, and *trahere*, to draw.] To contract, to draw together; to engage or assume a liability to or with another.\* **Qui cum alio contrahit vel est vel esse debet non ignarus conditionis ejus.** He who contracts with another either is or ought to be not ignorant of his condition. *Dig.* 50. 17. 19. **Furiosus nullum negotium contrahere potest.** A madman can contract nothing (can enter into no contract.) *Id.* 50. 17. 5. *Ita contrahitur donatio*; so the gift is contracted, i. e. completed between the parties. *Bract.* fol. 16 b.

**CONTRAMANDARE.** L. Lat. [from *contra*, against, and *mandare*, to command.] In old English law. To command against; to make an order contrary to a former order; to countermand.\* *Si dies placiti sit contramandatus*; if the day of the plea or day to plead be countermanded. *LL. Hen.* I. c. 59.

**CONTRAMANDATIO.** L. Lat. [from *contramandare*, q. v.] A countermanding. *Contramandatio placiti*, in old English law, was the respiting of a defendant, or giving him further time to answer, [by countermanding the day fixed for him to plead,

and appointing a new day;] a sort of im-  
parlance. *Cowell*.

**CONTRAPLACITUM.** L. Lat. In old  
English law. A counter plea. *Towns.*  
*Pl.* 61. See *Counterplea*.

**CONTRAPOSITIO.** L. Lat. In old  
English law. A plea or answer. *Blount.*  
A counterposition.

**CONTRAROTULATOR.** L. Lat. In  
old English law. A controller. *Reg.*  
*Orig.* 192. *Contrarotulator customarum*;  
controller of the customs. *Id. ibid.* *Con-*  
*trarotulator hospitii domini regis*; control-  
ler of the king's household. *Towns. Pl.*  
209. *Contrarotulator pipe*; controller of  
the pipe. *Cowell.* See *Controller*.

**CONTRAROTULUS.** L. Lat. In old  
English law. A counter roll. *Towns.*  
*Pl.* 61.

**CONTRATENERE.** L. Lat. To hold  
against; to withhold. *Whishaw.*

**CONTRAVENTION.** In Scotch law.  
The act of breaking through any restraint  
imposed by deed, by covenant, or by a  
court. 1 *Kames' Equity, Pref.*

The action founded on the breach of law  
burrows. *Ersk. Inst. b.* 4, tit. 1, § 16.

**CONTRACTATIO.** Lat. A handling  
or meddling with; the improper or unau-  
thorized use of a thing. This term is em-  
ployed in the civil law in the definition of  
theft, (*furtum*.) *Inst.* 4. 1. 1, 6, 8. See  
*Furtum*. Bracton has borrowed it from  
this source, but in many copies of that  
author it is misprinted *contractatio*, (fol.  
150 b;) which has sometimes occasioned  
difficulty in interpreting the passage in  
which it occurs. Dunlap, arg. 5 *Mason's*  
*R.* 540.

**CONTREFAIRE.** L. Fr. To imitate;  
to counterfeit. *Kelham.*

**CONTREMAUNT,** *Contremount.* L.  
Fr. Ascending; uppermost. *Id.*

**CONTREVAL.** L. Fr. Downwards.  
*Id.*

**CONTRIBUTION.** [Lat. *contributio*.]  
The making up by several parties jointly  
interested or indebted, to one of their num-  
ber, of a loss sustained, or payment made  
by him for the benefit of them all.\* Thus,  
where one of several sureties has been com-

pelled to pay the whole of the money for  
which they all became bound, he is entitled  
to receive *contribution* from all the others,  
for what he has done in relieving them from  
a common burden. 1 *Story's Eq. Jurispr.*  
§ 492, and notes. 1 *Smith's Lead. Cas.*  
71, note. *White's Eq. Cases*, 60. 3 Co. 11.  
1 *Arch. Pr.* 291.

So, in maritime law, where the property  
of one of several parties interested in a vessel  
and cargo has been voluntarily sacrificed for  
the common safety, (as by throwing goods  
overboard to lighten the vessel,) such loss  
must be made good by the contribution of  
the others, which is termed *general average*.  
3 *Kent's Com.* 232—244. 1 *Story's Eq.*  
*Jurispr.* § 490. See *General average*.

**CONTRIBUTIO FACIENDA.** See  
*De contributione facienda*.

**CONTROFACERE.** L. Lat. To coun-  
terfeit. *Reg. Orig.* 42. *Sigillum contro-*  
*fecisset*; he had counterfeited the seal.  
*Id. ibid.* *Controfacta.* *Id. ibid.*

**CONTROFACTURA.** L. Lat. A coun-  
terfeiting. *Towns. Pl.* 61.

**CONTROLLER,** erroneously written  
**COMPROLLER.** [L. Lat. *contrarotula-*  
*tor*; L. Fr. *contrerouleur*.] In old English  
law. An officer who took notes of any  
other officer's accounts or receipts, to the  
intent to discover him if he dealt amiss.  
*Fleta*, lib. 1, c. 18. *Cowell. Stat.* 12  
*Edw.* III. c. 3. One who kept a roll for  
this purpose, called a *counter roll*.\* See  
*infra*.

In modern law. An officer who has the  
inspection, examination or controlling of the  
accounts of other officers; one who keeps  
a counter register of accounts. *Jacob.*  
*Whishaw. Webster.* The office of the  
Roman *antigraphus* was of a similar charac-  
ter. *Cui id muneris injunctum erat, ut*  
*observet pecuniam, quam in usum principis*  
*vel civitatis collegerunt exactores.* *Budæus*,  
cited in *Cowell*.

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This word is frequently written, and  
sometimes defined, as though it were de-  
rived from the Fr. *compte*, or old English  
*accompt*, an account. The error of this de-  
rivation, however, is easily seen on reference  
to the L. Lat. and L. Fr. forms, (*contraro-*  
*tulator*, *contrerouleur*, from the latter of  
which the English *controller* is undoubtedly  
taken,) which show it to be compounded of  
*contra*, or *contre*, against, and *rotulator*,  
*rouleur*, an enroller; making its true signi-  
fication to be the keeper of a *counter roll*,

i. e. a roll intended as a check upon another officer's roll or account. See the definition *supra*. The correctness of this etymology is strikingly confirmed by the composition of the word *antigraphus*; (Gr. ἀντὶ, against, and γράφειν, to write,) the title of an officer who was charged with a similar duty in the Roman law. See *supra*. *Controller of the pipe* is defined by Cowell to be an officer who "keeps a *contra-rollment* [or *controlment*] of the pipe." So, by the Stat. 3 Edw. I. c. 10, sheriffs are directed to have or keep *counter rolls* with the coroners, &c. *Termes de la ley*, voc. *Counter rolls*. And in Britton the sheriff is expressly declared to be the coroner's *controller* in all his office; (*son countrerouleur en tout son office*.) *Britt.* c. 1. This was so, however, at an earlier period. *Bract.* fol. 121 b, 140 b. See *Counter-Roll*, *Roll*.

**CONTROVER.** [L. Fr. *controureur*.] In old English law. An inventor or deviser of false news. 2 *Inst.* 227.

**CONTROVER.** L. Fr. To contrive. *Controves*; contrived. *Kelham*.

**CONTUBERNIUM.** Lat. In the Roman law. The marriage of slaves; a permitted cohabitation. *Cooper's Justin. Inst. Notes*,\* 420. *Adam's Rom. Ant.* 50.

**CONTUMACE CAPIENDO.** See *De contumace capiendo*.

**CONTUMACY.** [Lat. *contumacia*, *contumacia*.] In practice. Disobedience to the rules or orders of a court, especially a refusal to appear in court when legally summoned. *Wharton's Lex.* Used as a synonyme of *contempt*, although it seems properly to have a stronger meaning, as of open contempt, or contempt wilfully and stubbornly persisted in.\* *Reg. Orig.* 85. *Bract.* fol. 127 b.

**CONTUTOR.** Lat. In the civil law. A co-tutor, or co-guardian. *Inst.* 1. 24. 1.

**CONUS.** L. Fr. Known. See *Lieu conus*.

**CONUSANCE.** Cognizance or jurisdiction. Conusance of pleas. *Termes de la ley*. See *Cognizance*.

**CONUSANS.** L. Fr. Acknowledgment. *Litt.* sect. 499. *Conusant*; knowing, understanding; privy to.

**CONUSTRE.** L. Fr. To acknowledge. *Litt.* sect. 499.

**CONVALESCERE.** Lat. To gain or acquire strength, force or validity; to become valid. *Convalescit donatio facta a furioso*; a gift made by a lunatic becomes valid, &c. *Bract.* fol. 11 b. *Ex ratihabitione convalescit*; it acquires validity from the ratification. *Id.* fol. 40. *Ex charta de confirmatione subsequente convalescit prima charta de donatione quæ ab initio fuit invalida*; the first deed of gift, which was originally of no effect, acquires validity from the subsequent deed of confirmation. *Id.* fol. 389.

*Quod ab initio non valet, tractu temporis non convalescet.* That which is not valid at the beginning shall not acquire validity by course of time. *Co. Litt.* 35 a. This maxim is almost in the same words with that of the civil law: *Quod ab initio vitiosum est, non potest tractu temporis convalescere.* *Dig.* 50. 17. 29.

**CONVEER.** L. Fr. To convey. *Kelham*.

**CONVENABLE, Covenable.** L. Fr. & Eng. Suitable; agreeable; convenient; fitting. *Litt.* sect. 103. *Stat.* 27 Edw. III. st. 2, c. 21. *Stat.* 2 Hen. VI. c. 2. *Cowell*.

**CONVENIENT.** [Lat. *conveniens*.] Proper, just, suitable. 7 *Man. & Gr.* 41, arg.

**CONVENIRE.** Lat. In the civil law. To sue. *Conveniri*; to be sued. *Inst.* 2. 6. 9. *Id.* 4. 8. 3. *Id.* 4. 11. pr. 2. Hence the Scotch *convens* and *convener*.

**CONVENIRE.** L. Lat. To covenant. *Convenit, promisit et agreevit*; he covenanted, promised and agreed. *Hob.* 34 b.

**CONVENIT.** Lat. It is agreed; it was agreed. *Hec servabitur quod initio convenit*. That shall be observed which was originally agreed to. *Dig.* 50. 17. 23. *Scias quod convenit inter A. petentem et B. tenentem*. Know that it is agreed between A. demandant, and B. tenant. *Bract.* fol. 73 b.

**CONVENT.** [Lat. *conventus*, from *convnire*, to assemble together.] The fraternity of a religious house, as of an abbey or priory. *Bract.* fol. 16, 347. Frequently written *covent*. *Litt.* sect. 133. *Co. Litt.* 94 a, b.

**CONVENTICLE.** [Lat. *conventiculum*, dim. of *conventus*; a little assembly.] A private assembly or meeting for religious



worship. First applied, as a term of reproach, to the religious assemblies of Wickliffe, in the reigns of Edw. III. and Richard II. Now usually applied in England to a meeting of dissenters from the established church. *Cowell. Blount. Wharton's Lex.* In strict propriety, the term denotes an *unlawful assembly*.

**CONVENTIO.** Lat. [from *convenire*, to come together.] In the civil law. A coming together of parties; a convention; an agreement. This was a term of the most general description, applying to all subjects upon which parties might come together for the purpose of entering into any engagement or transacting any business. *Conventionis verbum generale est ad omnia pertinens de quibus, negotii contrahendi transigendique causâ, consentiunt qui inter se agunt. Dig. 2. 14. 1. 3.* It included the two leading divisions of contracts (*contractus*) and pacts (*pacta*). *Heinec. El. Jur. Civ. lib. 3, tit. 14, § 784.*

**CONVENTIO.** L. Lat. In old English law. A covenant; an agreement. *Breve de conventionie*; a writ of covenant. *Reg. Orig.* 165, 166. *Si quis a conventionie recedat, succurritur alteri parti per actionem de conventionie*; if any one draws back from his covenant, the other party has a remedy by an action of covenant. *Bract. fol. 34.* And see *Id. fol. 18 b. Conventio duplicata*; an agreement executed in duplicate, or in two parts. *Id. fol. 169.*

**Conventio vincit legem.** The express agreement of parties overcomes [prevails against] the law. *Story on Agency, § 368.* As where it is agreed that a lien shall not be lost by a transfer of possession. *Id. ibid.* See **Modus et conventio vincunt legem.** These maxims are qualified by the following.

**Conventio privatorum non potest publice juri derogare.** The agreement of private persons cannot derogate from public right; i. e. cannot prevent the application of general rules of law, or render valid any contravention of law. *Co. Litt. 166 a. Wingate's Max. 746. Broom's Max. 308.* This is also a maxim of the civil law. **Privatorum conventio juri publice non derogat.** *Dig. 50. 17. 45. 1.*

**CONVENTION.** In English law. An assembled parliament, before any act is passed, or bill signed. *Jacob.*

More properly, an extraordinary assembly of both houses, without being convoked by the sovereign.\* The parliament which restored king Charles II. was called the *convention parliament*. 1 *Bl. Com.* 151.

**CONVENTIONAL.** [from Lat. *conventio*, q. v.] That which is produced by, or depends upon the agreement or mutual arrangement of parties.\* *Conventional estates* are those estates for life, which are expressly created by the act of the parties; as distinguished from *legal estates*, or those which are created by construction and operation of law. 2 *Bl. Com.* 120.

**CONVENTUS.** Lat. [from *convenire*, to come together.] In old English law. An assembly. *Conventus magnatum vel procerum*; an assembly of the great men or nobles. One of the ancient names of the English parliament. 1 *Bl. Com.* 148. A convent. *Bract. fol. 16, 347.*

**CONVERSANTES.** L. Lat. In old English law. Conversant or dwelling; commorant. *Stat. Marlbr. c. 10. 2 Inst.* 122.

**CONVERSION.** [Lat. *conversio*, from *convertere*, to turn towards.] An appropriation of property; one of the grounds of the action of trover. 3 *Bl. Com.* 152. 3 *Steph. Com.* 525. See *Trover*.

**CONVEY.** [from L. Fr. *conveier*, *conveer*; L. Lat. *convehere*.] To pass or transmit from one to another; to transfer property or the title to property by an instrument in writing.

In a stricter sense, to transfer by deed or instrument under seal. See *Conveyance*.

**CONVEYANCE.** An instrument in writing by which property or the title to property is transferred from one person to another.

In a stricter sense, an instrument in writing under seal, (anciently termed an *assurance*,) by which some estate or interest in lands is transferred from one person to another; such as a deed, mortgage, &c. 2 *Bl. Com.* 293, 295, 309. See *Assurance, Deed*.

This term is generally restricted in its application to transfers *inter vivos* (between living parties) though in a large sense it includes wills also. *Id.* 294. *Bacon's Use of the Law*, 66. The Revised Statutes of New-York have defined it to embrace "every instrument in writing by which any estate or interest in real estate is created, aliened, mortgaged or assigned, or by which the title to any real estate may be affected in law or equity, except last wills and testaments, leases for a term not exceeding three years, and executory contracts for the

sale or purchase of lands." 1 *Rev. Stat.* [762], 752, § 38. See 3 *Mass. R.* 487.

**CONVEYANCE.** In pleading. Introduction or inducement. 3 *Wooddes. Lect.* 22. See *Inducement*.

**CONVEYANCERS.** Members of the legal profession who employ themselves (sometimes, as in England, solely,) in the drawing and preparation of deeds or assurances of property. *Wharton's Lex.* 1 *Wooddes. Lect.* xci. See *Conveyancing*.

**CONVEYANCING.** The business or practice of preparing conveyances, especially of real estate; including the investigation of titles, the preparation of abstracts, &c. Conveyancing may be considered as both a science and an art; a science as it embraces an acquaintance with the law of property, and particularly of the principles of alienation; an art as it applies those principles to practice, in the framing of appropriate instruments or conveyances.\* In England it is a highly artificial system of rules and practice, which maintains its own separate body of practitioners and professors. 1 *Steph. Com.* 466. *Warren's Law Studies*, 319, *et seq.* (Am. ed.)

**CONVEYER, Conveier.** L. Fr. To derive title; to derive by descent. *Litt.* sect. 703, 705, 706.

To **CONVICT.** [L. Lat. *convincere*.] In practice. To condemn; to find guilty of an offence [usually] by the verdict of a jury.\* 4 *Bl. Com.* 362.

To find against the defendant in civil cases. "Whereof the said defendant is convicted, as appears of record, &c.

**CONVICT.** [L. Lat. *convictus*.] In practice. One who is found guilty of an offence by the verdict of a jury, or other legal decision. *Staundf. Pl. Cor.* 186. *Termes de la ley.* *Cowell.* *Wharton's Lex.* *Convict recusant*, in English law, was a person who had been legally prosecuted, indicted, and convicted for refusing to come to church to hear the common prayer, according to several statutes of Elizabeth and James. *Termes de la ley.*

**CONVICTION.** [L. Lat. *convictio*.] In practice. The finding of a person guilty of an offence with which he has been charged, either by the verdict of a jury, [the decision of any other competent tribunal,] or on his own confession. 4 *Bl. Com.* 362.

A finding against a defendant in a civil action. See *To Convict*.

A record of the proceedings by which an offender has been convicted and sentenced. *Holthouse*. It is not sufficient that such a record contains the finding of the jury, unless it includes also the judgment of the court. 7 *Man. & Gr.* 498, arg. 15 *East*, 570. See *U. S. Digest, Supplement* and *Ann. Digest, Conviction*.

**CONVOCATION.** In English law. An assembly of all the clergy, for the purpose of consulting on ecclesiastical matters. *Termes de la ley.* 2 *Steph. Com.* 541. It is in the nature of a parliament, being in the province of Canterbury, composed of two houses, of which the archbishop and bishops form the upper house, and the lower consists of deans, arch-deacons, the proctors for the chapters, and the proctors for the parochial clergy. In York it consists of one house only. 2 *Steph. Com.* 542. The convocation has always met in time of parliament, and although it has been long the course to summon it *pro forma* only, it is still, in fact, summoned before the meeting of every new parliament, and adjourns immediately afterwards without even proceeding to the despatch of business. *Id. ibid.*

**CONVOY.** [from Fr. *convoyer*, to escort; Lat. *convehere*, to convey or conduct safely.] In commercial and international law. A naval force under the command of an officer appointed by the government of a country, or under its authority, for the purpose of sailing with, and protecting its merchant vessels, and usually in time of war.\* *Park on Insurance*, ch. 18. 1 *Marshall on Ins.* 360. *Smith's Merc. Law*, 227. *Abbott on Ship.* [352], 432. 2 *Archb. N. Prius*, 175.

**COOPERTIO.** L. Lat. [from *cooperire*, to cover.] In old English law. A covering, or exterior coat, as the bark of a tree. *Cowell.* *Quercus discooperta*; an oak stripped of its bark, or debarked. *Id.*

**COOPERTORIUM.** L. Lat. A covering. *Cowell.* See *Coopertio*.

**COOPERTUM.** L. Lat. [from *cooperire*, to cover.] In forest law. A covert; a thicket (*dumetum*) or shelter for wild beasts in a forest. *Cart. de Foresta*, c. 12. *Reg. Orig.* 258. *Spelman*.

**COOPERTURA.** L. Lat. In forest law. A thicket, or covert of wood. *Blount.* See *Coopertum*.

**COOPERTUS**, *Cooperta*. L. Lat. In old English law. Covered, covert. *Femina viro cooperta*; a feme covert. See *Covert*.

**COPARCENARY**. A species of estate, or tenancy, which exists where lands of inheritance descend from the ancestor to two or more persons. It arises in England either by common law, or particular custom. By common law, as where a person seised in fee simple or fee tail, dies, and his next heirs are two or more females, his daughters, sisters, aunts, cousins or their representatives; in this case they all inherit, and these co-heirs are then called *coparceners*, or, for brevity, *parceners* only. *Litt. sect. 241, 242. 2 Bl. Com. 187.* By particular custom, as where lands descend, as in gavelkind, to all the males in equal degree, as sons, brothers, uncles, &c. *Id. ibid. Litt. sect. 265. Co. Litt. 163 b. 1 Steph. Com. 319. 2 Crabb's Real Prop. 931, 932, § 2296.* It resembles, in some respects, an estate in joint tenancy, but in others they materially differ. *1 Steph. Com. 319.* In the United States, it is not distinguishable from tenancy in common. *4 Kent's Com. 367.*

Lord Coke observes that this tenancy is called in the ancient books *adaquatio*, and sometimes *familia herciscunda*, an estate to be divided. *Co. Litt. 164 b.* Both these terms, however, (the former in the feudal, the latter in the civil law,) seem to denote a process for dividing an estate, rather than the estate itself. See *Adaquatio, Familia herciscunda*.

**COPARCENERS**. [L. Lat. *coheredes participes, coparticipes*.] Persons holding an estate in coparcenary. See *Coparcenary*. Persons to whom an estate of inheritance descends jointly, and by whom it is held as one estate.\* *2 Bl. Com. 187. Bract. fol. 71 b, 75.* See *Parceners*. This word was anciently applied to males as well as females, but is now usually confined to the latter. In Virginia, however, the statute of descents still applies it to both male and female heirs. *4 Kent's Com. 367.*

**COPARE**, *Colpare*. L. Lat. [L. Fr. *copper*.] To fell, cut, or chop, as wood. *Spelman*.

**COPARTICEPS**. L. Lat. A coparcener. *Co. Entr. 377. 711.*

**COPARTNER**. See *Partner*.

**COPARTNERSHIP**. See *Partnership*.

**COPE**. Sax. A hill. *Co. Litt. 4 b.*

The top or summit of a thing, as of a house. *Cowell*.

A tribute paid out of lead mines in England. *Blount*.

**COPIA**. Lat. Opportunity or means of access. *Copiam facere*; to grant opportunity of access. *Sui copiam facere*; to put one's self within another's reach; to grant the means of access; to appear in court. *Bract. fol. 20 b, 364 b. Sui copiam non facere*; to fail to appear to an action. *Inst. 1. 26. 9.*

*Copiam scripturæ facere*; to grant an opportunity of knowing the contents of a writing, as by showing it. *Bract. fol. 34. Copiam habere*; to have access, or the means of inspection. *Id. fol. 389 b.* See *Copy*.

**COPIA**. L. Lat. [L. Fr. *copie*.] A copy. *Copia libelli*; the copy of a libel. *Reg. Orig. 58. Breve de copia libelli deliveranda*; a writ to deliver the copy of a libel. *Id. ibid. Co. Litt. 57 b.* Lord Coke says it is a Latin word made from the Fr. *copie*, and refers to the writ in the Register to show its antiquity. But from the manner in which it is used by Bracton, it seems rather to be the legitimate Latin word *copia*, (*supra*), applied in a peculiar sense. See *Copy*.

**COPIE**. L. Fr. Copy. *Litt. sect. 73. 75.* See *Copy*.

*Copulatio verborum indicat acceptationem in eodem sensu.* Coupling of words together shows that they are to be understood in the same sense. *Bacon's Works*, vol. iv. p. 26. *Broom's Max. 294.*

**COPY**. [L. Lat. *copia*; Fr. *copie*.] The transcript or double of an original writing, as a charter, roll, patent, deed, writ, pleading, affidavit, &c.\* *Termes de la ley. Cowell.* Copies are of two kinds; under seal, and not under seal.

Copies under seal are called *exemplifications*, and are either under the great seal, or under the seal of the court in which the originals are filed or deposited.\* *2 Tidd's Pr. 800.* Copies not under seal are also, in England, of two kinds; sworn copies and office copies. A *sworn* or *examined copy* is a copy sworn (by the party intending to use it) to have been examined with the original record or paper, being first prepared by the officer having custody of it. An *office copy* is a copy made out by the officer in whose hands the original is, without being examined. *Archb. N. Pract. 357.* A *certified copy*, in the United States, is a copy

certified to be such by the officer having the custody of the original, (being previously compared by him with such original,) and usually under seal, unless where the original is filed with the clerk of a court, and the copy is to be used in the same court. Sworn copies are not generally in use.

The word *copy* seems obviously derived from the Latin *copia*; the change from the classical (leave, liberty, opportunity,) to the law sense (a transcript) being very significantly shown in the use made of it by Bracton. Speaking of that description of deeds then called *chartæ communes*, (i. e. those in which both parties had a common interest, as involving a mutuality of obligation,) this author observes that where such a deed remained in the possession of the grantee, the grantor might, in a case where his interest was concerned, demand to have it shown to him; (*donator, eo quod sua interest, petat a donatorio exhibitionem*;) and that where there was a dispute or doubt between the parties as to the right of either, the grantee was bound to exhibit the instrument, (*exhibeat instrumentum*), or he could have no action, &c. *Bract. fol. 34.* So, in case of a dispute between the grantor of a manor and the tenant or holder of it, the same author observes that the latter was bound to show his deed, (*ostendere debet tenens chartam*), to make good his plea. *Id. ibid.* And he then proceeds to lay down the general rule, that whenever a party wished to make use of a private writing for his own benefit, in a judicial proceeding, he must allow his adversary to inspect and use it against him, (*copiam faciet adversario suo contra se*;) but that a demandant had no right to require that instruments in the hands of the tenant should be shown him for the purpose of enabling him to count or declare, since a party was not bound to arm his adversary against himself, unless the instruments were common, (i. e. of the kind above described.) *Copiam facere*, in this last quotation, is obviously the common classical expression signifying to impart a thing, to allow a privilege in, or respecting it. See *Copia*. *Copiam facere scripturæ* is to grant a party the privilege or opportunity of acquainting himself with the contents of a writing, which was done, as clearly appears from the context, by showing it to him. See *Bract. fol. 389 b.* Convenience no doubt suggested the practice, in most cases, of delivering a transcript instead of showing the original; and when the privilege (*copia*) came to assume this shape, it is easy to see how the word itself would gradually acquire a new and technical meaning, attaching, as a name

of description, to the particular transcript so made use of. Hence, probably, was formed the Fr. *copie*, from which is obviously derived the English *copy*. See *Transcript*. So that by this process the classical *facere copiam* would ultimately become (as it did) good Law Latin, signifying to make a copy. *Copiam concedere et liberare*, (to grant and deliver a copy,) is the language of the old writ *de copia libelli deliberanda. Reg. Orig. 58.* And that this technical application of the word *copia* was by a very easy transition, will appear from a comparison of the *copia libelli* of this writ with the *libri copia* of Aulus Gellius in the following passage: *Catonis verba huic prorsus commenturio indidissem, si libri copia fuisset id temporis cum*, &c. *A. Gell. Noct. Att. i. 23.* The sense, it will be seen, is the same, whether the words "*si libri copia fuisset*" be translated "if I had had the means of consulting the book," or in the modern phrase, "if I had had a copy of the book."

**COPYHOLD, Copihold.** [*L. Lat. tenuera per copiam rotuli curiæ*; Fr. *tenure per copie de court rol.*] A tenure or holding by copy of court roll. A species of estate at will, or customary estate in England, the only visible title to which consists of the copies of the court rolls, which are made out by the steward of the manor, on a tenant's being admitted to any parcel of land, or tenement belonging to the manor. *2 Bl. Com. 94, 95, 147. Co. Litt. 58 a. Litt. sect. 75.* It is an estate at the will of the lord, yet such a will as is agreeable to the custom of the manor, which customs are preserved and evidenced by the rolls of the several courts baron, in which they are entered. *2 Bl. Com. 95.* It is a base tenure, founded upon immemorial custom.\* *2 Steph. Com. 43, 44.*

In a larger sense, *copyhold* is said to import every customary tenure, (that is, every tenure depending on the particular custom of a manor,) as opposed to free socage, or *freehold*, which may now, (since the abolition of knight-service) be considered as the general or common law tenure of the country. *1 Steph. Com. 210.* See *1 Crabb's Real Prop. 608, § 765, et seq. Burton's Real Prop. ch. vii. Watkins and Scriven on Copyholds.*

Copyhold is lineally descended from the ancient tenure of pure villenage, the will of the lord by which the villein held having become, in the course of time, so far modified and controlled by custom, as to allow the tenant to hold his lands, on performance of the required services, in spite of any de-

termination of the lord's will. 2 *Bl. Com.* 95. 1 *Steph. Com.* 201, 210. 1 *Reeves' Hist. Eng. Law*, 39. Copyhold is, in other words, villenage divested of all its slavish incidents. *Crabb's Hist. Eng. Law*, 536. Villeins appear to have been called *customarii tenentes* (customary tenants) in the fourth year of Edw. I.; *tenants per roll solonque le volunt le seigneur*, (tenants by roll according to the will of the lord,) in 42 Edw. III. 35; *tenants per le verge*, (by the verge,) in 14 Hen. IV. 34; and *copyholders* in 1 Hen. V. 11. *Co. Litt.* 58. 3 *Reeves' Hist. Eng. Law*, 312, 313.

**COPYHOLDER, Copiholder.** [L. Fr. *tenant per copie de court rol*.] In English law. A tenant by copyhold; so called from the *copy* of the court *roll* delivered to him by the steward of the manor, as the evidence of his title. *Co. Litt.* 58 a. *Litt. sect.* 75. 2 *Bl. Com.* 95.

**COPYRIGHT, formerly termed COPY.** The exclusive right which the law allows an author (or a person purchasing from an author) of printing, publishing and selling a written composition during a certain period of time.\* 2 *Chitty's Bl. Com.* 405—408, and notes. 2 *Steph. Com.* 94—99. 2 *Kent's Com.* 373—384. *Curtis on Copyright*, ch. 1. Called by Mr. Stephen "an incorporeal chattel." 2 *Steph. Com.* 72, 94. Lord Mansfield, in *Millar v. Taylor*, defined "copy" to be "an incorporeal right to the sole printing and publishing of somewhat intellectual communicated by letters," and observed that this was the technical sense in which the term had been used for ages. 4 *Burr.* 2303, 2396. A copyright may be had in maps, charts, prints, cuts, engravings and musical compositions, as well as in books. 2 *Kent's Com.* 373. See *Curtis on Copyright*. *U. S. Digest*, Copyright.

**COR, Core.** L. Fr. Heart. *Kelham*.

**CORAAGE.** See *Coraagium*.

**CORAAGIUM.** L. Lat. [from *corus*, a measure of corn.] In old English law. A species of common tribute or prestation, mentioned by Bracton, as arising on certain necessary and unusual occasions, and in that respect distinguished from ordinary services and customs. It is classed with hidage and carvage, and is supposed to have been a contribution of certain measures of corn. *Bract.* fol. 37, 35. *Cowell. Termes de la ley*.

**CORAM.** Lat. Before; in presence of. Applied to persons only. *Towns. Pl.* 22.

*Brevia coram rege, vel coram justitiariis de banco, vel coram justitiariis itinerantibus*; writs before the king, or before the justices of the bench, or before the justices itinerant. *Stat. Marlbr.* c. 5.

**CORAM IPSO REGE.** Lat. Before the king himself. The style of the court of King's Bench, it having been originally held before the sovereign in person. 3 *Bl. Com.* 41. *Bract.* fol. 362.

**CORAM NOBIS.** Lat. (Before us.) In English practice. The name given to writs of error on judgments of the court of King's (or Queen's) Bench, so called from that clause in the old forms which described the record and process as remaining "before us," (*quæ coram nobis resident*); that being the style of the court. 1 *Arch. Pr.* 234, 276. 2 *Tidd's Pr.* 1136. See *Coram ipso rege*.

Writs of error to correct the judgments of other courts, (such as the Common Pleas) are said to be *coram vobis*; the record and process being stated to remain "before you," (*quæ coram vobis resident*), that is, before the justices of the court. *Id.* 1137. This description seems to express more accurately the distinction between writs *coram nobis* and *coram vobis* than that which represents the former as lying to the same court in which the judgment was given; and as lying for errors *in fact*; neither of which features seem to be peculiar to it. *Id.* 1136, 1137. 2 *Impey's Pr.* K. B. 811. 1 *Arch. Pr.* 234, 276. 2 *Saund.* 100, 101 a, note. See *Coram vobis*.

**CORAM NON JUDICE.** L. Lat. Before one who is not a judge, or who has not jurisdiction. 3 *Bl. Com.* 111. 10 *Co.* 76. Where an action is brought in a court whereof the judges have not any jurisdiction, it is said to be *coram non jndice*. *Cro. Eliz.* 530. *Cro. Jac.* 531. *Termes de la ley*. It is also sometimes applied to proceedings even in a court having jurisdiction, where they become void by irregularity. *W. Jon.* 170.

**CORAM PARIBUS.** L. Lat. Before the peers or freeholders. *Feud. lib.* 2, tit. 32. The attestation of deeds, like all other solemn transactions, was originally done only *coram paribus*. 2 *Bl. Com.* 307. *Coram paribus de vicineto*; before the peers or freeholders of the neighborhood. *Id.* 315. See *Pares, Peers*.

**CORAM SECTATORIBUS.** L. Lat. Before the suitors. *Cro. Jac.* 582.

**CORAM VOBIS.** Lat. (Before you.) In English practice. A name given to writs of error on judgments of other courts than the King's (or Queen's) Bench; especially the court of Common Pleas. See *Coram nobis*. A writ of this kind lies to the Common Pleas to correct its own judgments; as for errors in fact. 2 *Tidd's Pr.* 1137, 1142, 1143.

**CORAUNT.** L. Fr. Passing; running; current. *Kelham*.

**CORNAGE.** [L. Lat. *cornagium*, from *cornu*, a horn.] In old English law. Service of the horn. A kind of tenure in grand serjeanty, the service of which was to blow a horn, when any invasion of the northern enemy [the Scots,] was perceived, [in order to alarm the country.] *Termes de la ley*. This was a common tenure in the marches of Scotland. *Litt. sect.* 156. *Co. Litt.* 107 a. 2 *Bl. Com.* 74. *Camd. Brit.* 609.

**CORNARE.** L. Lat. [from *cornu*, a horn.] To wind or blow a horn. *Spelman*.

**CORN RENTS.** Rents reserved in corn, that is, in wheat or malt. Proportions of rents on college leases, [being one-third,] directed by the statute 18 Eliz. c. 6, to be reserved in wheat or malt. 3 *Steph. Com.* 141, 142. 2 *Bl. Com.* 322.

**CORNUB'.** An abbreviation of *Cornubia*, Cornwall, in old English pleadings and records. *Towns. Pl.* 147. *Cowell, Appendix*.

**CORODIUM,** *Corrodium, Corredium.* L. Lat. A corody. *Spelman.* 2 *Inst.* 630. See *Corody*.

**CORODY,** *Corrody.* [L. Lat. *corodium, corrodium.*] In old English law. A right of sustenance; or a right to receive certain allotments of victual and provision for one's maintenance. *Finch, Law*, 162. 2 *Bl. Com.* 40.—An allowance of food, and sometimes of other necessities, which a person was entitled to, for life, years or in fee, and usually from a religious house. It belonged to the founders of these houses of common right, (unless the foundation was in frankalmoin,) and in this way became frequently due to the king.\* *Spelman. Termes de la ley*. It was a species of incorporeal hereditament, but is now obsolete. 2 *Bl. Com.* 40. 1 *Id.* 283. 2 *Inst.* 630. 1 *Crabb's Real Prop.* 252, § 259. *Crabb's Hist. Eng. Law*, 252.

**CORODIO HABENDO.** L. Lat. See *De Corodio habendo*.

**CORONA.** Lat. [Fr. *corone.*] The crown. *Placita coronæ*; pleas of the crown; criminal actions or proceedings, in which the crown was the prosecutor. See *Pleas of the crown*.

**CORONATOR.** L. Lat. [from *corona*, q.v.] A coroner. *Reg. Orig.* 177. *Spelman. Magna Charta*, c. 17. 2 *Inst.* 31. *Bract.* fol. 121, 122.

**CORONATORE ELIGENDO.** See *De coronatore eligendo*.

**CORONATORE EXONERANDO.** See *De coronatore exonorando*.

**CORONER.** [L. Lat. *coronator*, from *corona*, the crown. See *infra*.] A county officer of great antiquity at the common law, whose powers and duties are both judicial and ministerial, but principally the former. It has always been his peculiar office to inquire into the causes of violent or sudden deaths, by a jury of proper persons, upon view of the dead body, (*super visum corporis*.) *Bract.* fol. 121. *Stat.* 4 *Edw. I. De officio coronatoris.* 1 *Bl. Com.* 346, 348. 3 *Steph. Com.* 33—36. Another branch of his judicial office is to inquire concerning *shipwrecks*, and certify whether wreck or not, and who is in possession of the goods; and also to inquire concerning *treasure trove*, who were the finders and where it is, and whether any one be suspected of having found and concealed a treasure. *Bract.* fol. 121, 122. 1 *Bl. Com.* 349. The ministerial office of the coroner is only as the sheriff's substitute in executing process. 3 *Steph. Com.* 37. This was a part of his duty as early as the time of Bracton. *Bract.* fol. 75. Coroners are also, by virtue of their office, conservators of the public peace. *Britt.* c. 1. 1 *Bl. Com.* 347. See *Conservator of the peace*. All these duties continue to be attached to the office of coroner in the United States. 2 *N. Y. Rev. St.* [742], 622, § 1, *et seq.* 1 *Id.* [690], 688, § 2. *Id.* [380—382, §§ 78—86;] 373, 374, §§ 89—97. See *U. S. Digest*, Coroner.

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The name *coroner* seems clearly derived from the important part which the officer bearing it originally took in the prosecution of those offences which concerned the crown, (L. Fr. *corone*; Lat. *corona*.) 2 *Reeves' Hist. Eng. Law*, 12. The coroner (*coronator*) is first mentioned by name in *Magna*

Charta, (c. 17); although allusion is made to the office in the *capitula* of Henry II. and in those given in the reign of Richard I. to the justices in eyre, wherein they were commissioned to choose three knights and one clerk in every county to be *custodes placitorum coronarum*. *Crabb's Hist. Eng. Law*, 150. According to the Mirror, (c. 1, § 3,) the office was established by the Saxon kings, but it is most probable that it was created soon after the conquest; the coroner being appointed, together with the sheriff, to keep the peace, when the earls gave up the wardship of the county. *Crabb's Hist.* 149, 150. 1 *Bl. Com.* 347. The word itself seems to be essentially French, being constantly used by Britton in his first chapter, which is entitled "*De Coroners*."

The office of coroner has, in modern times, retained but a trace of its ancient dignity and importance. Coroners are declared in Britton to be, in every county, the principal keepers of the peace, to bear record of pleas of the crown. Their duties (which are minutely described in the first chapter of this author, and in the second tract of the third book of Bracton, entitled "*De corona*,") embraced not only the modern duty of holding inquests over the bodies of persons slain or suddenly deceased, but the examination of the bodies of *living* persons who had been wounded or otherwise corporally injured, the taking of criminal appeals, abjurations of the realm, &c. An important feature of their ancient office was the keeping of *rolls* or records of every thing done before them, which rolls were sometimes received as conclusive evidence. *Bract. fol.* 140 b, lib. 3, tr. 2, c. 20. See *Counter Roll*.

**CORPORAL.** [Lat. *corporalis*, *corporeale*, from *corpus*, q. v.] Bodily; personal.

**CORPORAL OATH.** [Lat. *corporale sacramentum*.] An oath taken by laying hand on the gospels, as by actual contact of the person. 3 *Inst. c.* 74. *Cowell, voc. Oath.* *Tacto per se sancto evangelio*; having personally touched the holy gospel. *Cro. Eliz.* 105. The oath of proctors and advocates in the English consistory courts is in the following words: *Ego A. B. ad ista sancta Dei evangelia per me corporaliter tacta juro, quod, &c.*; I, A. B., on these holy gospels of God, by me corporally touched, do swear, that, &c. *Hallifax Anal. Appendix*, No. vi.

**CORPORALE SACRAMENTUM.** L. Lat. A corporal oath. *Reg. Orig.* 95 b. *Bract. fol.* 74.

**CORPORALIS.** Lat. [from *corpus*, a

body.] That which has a body or material substance; corporeal. *Corporales res*; corporeal things; things which may be touched and seen; such as land, garments, gold and silver, &c., comprising both moveables and immoveables. *Bract. fol.* 7 b, 10 b, 13 b.

That which relates to, or affects the body; bodily; personal. *Corporalis injuria non recipit satisfactionem de futuro.* A personal injury does not receive satisfaction from a future course of proceeding [is not left for its satisfaction to a future course of proceeding]. *Bacon's Max.* 34, regula 6. The law, in many cases that concern lands or goods, doth deprive a man of his present remedy, and turneth him over to a further circuit of remedy, rather than to suffer an inconvenience; but if it be a question of *personal pain*, the law will not compel him to sustain it and expect remedy, because it holdeth no damage a sufficient recompense for a wrong which is corporal. *Id. ibid*. This maxim seems to embody the general principle of law which allows to personal injuries the speediest course of remedy.

**CORPORATE.** [L. Lat. *corporatum*.] Belonging to a corporation; as a corporate name.

Incorporated; as a corporate body.

**CORPORATION.** [L. Lat. *corporatio*, *corpus corporatum*.] An artificial person or being, endowed by law with the capacity of perpetual succession; consisting either of a single individual, (termed a corporation *sole*) or of a collection of several individuals, (which is termed a corporation *aggregate*.) 3 *Steph. Com.* 166. 1 *Bl. Com.* 467, 469. Marshall, C. J., 4 *Wheaton's R.* 518, 543. Thompson, J., 14 *Peters' R.* 122, 129. It is also defined to be a franchise, and is otherwise denominated a *body corporate* and a *body politic*; sometimes a civil being, (*ens civile*), and by the civilians a *juridical*, moral or fictitious person. 2 *Bl. Com.* 37. 2 *Kent's Com.* 267. Washington, J., 4 *Wheaton's R.* 518, 555. *Angell & Ames on Corp.* Introd. 3 *Salk.* 102. 1 *Mackeld. Civ. Law*, 145, § 141. See *Body corporate*, *Body politic*, *Ecclesiastical corporation*, *Lay corporation*, *Eleemosynary corporation*, *Civil corporation*, *Public corporation*, *Private corporation*.

**CORPORATION AGGREGATE.** A collection of several individuals united into one body, under a special denomination, and having perpetual succession under an artificial form, and vested by the policy of the law with the capacity of acting in several respects as an individual. *Shelford on*

*Mortmain*, 22. 1 *Kyd on Corp.* 13. 2 *Kent's Com.* 267. Story, J., 4 *Wheaton's R.* 518. 561. Of this description are the mayor and commonalty of a city, the head and fellows of a college, and in England the dean and chapter of a cathedral church. 3 *Steph. Com.* 168. This kind of corporation is called by the civilians *collegium* and *universitas*, (qq. v.) *Dig.* 3. 4.

**CORPORATION SOLE.** A corporation consisting of one person only, and his successors in some particular station, who are incorporated by law in order to give them some legal capacities and advantages, particularly that of perpetuity, which in their natural persons they could not have had. In this sense, the sovereign in England is a sole corporation, so is a bishop, so are some deans distinct from their several chapters, and so is every parson and vicar. 3 *Steph. Com.* 168, 169. 2 *Kent's Com.* 273.

In the United States, a minister seised of parsonage lands in right of the parish is held to be a sole corporation for this purpose. 7 *Mass. R.* 445. But in general, corporations of this kind are of rare occurrence.

**CORPORATION ACT.** In English law. The statute 13 Car. II. st. 2, c. 1; by which it was provided that no person should thereafter be elected to office in any corporate town, that should not, within one year previously, have taken the sacrament of the Lord's Supper, according to the rites of the Church of England; and every person, so elected, was also required to take the oaths of allegiance and supremacy. 3 *Steph. Com.* 103, 104. 4 *Bl. Com.* 58. This statute is now repealed. 4 *Steph. Com.* 511.

**CORPORATOR.** A member of a corporation.

**CORPOREAL.** [Lat. *corporalis*.] That which can be touched and seen; material. *Co. Litt.* 9 a.

**CORPOREAL HEREDITAMENTS.** Such hereditaments as are of a material and tangible nature, and may be perceived by the senses, consisting wholly of substantial and permanent objects, all which may be comprehended under the general denomination of *land* only.\* 2 *Bl. Com.* 17, 18. 1 *Steph. Com.* 159. 3 *Kent's Com.* 401, 402.

**CORPUS.** Lat. A body; a human body. *Corpus humanum non recipit estimationem.* The human body does not admit of valuation. *Hob.* 59.

An artificial body created by law, as a corporation. *Neque societas, neque collegium, neque hujusmodi corpus*; neither a partnership, nor a corporation, nor any body of the kind. *Dig.* 3. 4. 1. *In collegiis et capitulis semper idem corpus manet, quamvis successive omnes moriantur*; in corporations and chapters the body remains always the same, although all [the individuals composing it] die in succession. *Bract.* fol. 374 b. See *Id.* fol. 78 b.

A body or collection of laws. See *Corpus juris*.

A material substance; something visible and tangible, as the subject of a right; (*corpus cui jus inest*.) *Bract.* fol. 23<sup>u</sup>. *Id.* fol. 16. Something having local position, as distinguished from an incorporeal right. Thus, the *corpus* of land is sometimes distinguished from the estate or interest in it. 2 *Powell on Devises*, 412. 2 *Kames' Equity*, 342, 343. So in the Scotch law, a specific article of property is called *corpus*, as distinguished from its mere equivalent in money or other form. *Id.* 71, 167.

A substantial or positive fact, as distinguished from what is equivocal and ambiguous. The *corpus delicti* (body of an offence) is the fact of its having been actually committed. *Best on Presumptions*, 269—279.

A corporeal act of any kind, (as distinguished from *animus* or mere intention,) on the part of him who wishes to acquire a thing; whereby he obtains the physical ability to exercise his power over it whenever he pleases. The word occurs frequently in this sense in the civil law. 1 *Mackeld. Civ. Law*, 248, § 240. *Bract.* fol. 38 b, 39 b, 45 b.

**CORPUS COMITATUS.** L. Lat. The body of a county. *Molloy de Jur. Mar.* 231. *Cro. Jac.* 514. 5 *Howard's R.* 452, 453, 462. 5 *Mason's R.* 290. The county at large, as distinguished from any particular locality within it. See *De corpore comitatus*.

**CORPUS CUM CAUSA.** L. Lat. (The body with the cause.) An English writ which issued out of chancery, to remove both the *body* and the record, touching the *cause* of any man lying in execution upon a judgment for debt, into the king's bench, there to remain until he satisfied the judgment. *Cowell. Blount.* Applied also to a writ of *habeas corpus* for the removal of a cause.\* See *Habeas corpus*.

**CORPUS DELICTI.** Lat. The body, substance or foundation of an offence. The



substantial and fundamental fact of its having been committed. Lord Stowell, 1 *Haggard's C. R.* 105. *Best on Presumptions*, 269, § 201, *et seq.*

**CORPUS JURIS.** L. Lat. A body of law. A term introduced in the middle ages to signify a book comprehending several collections of law. There are two principal collections to which that appellation is given; the *Corpus Juris Civilis*, and the *Corpus Juris Canonici*, (qq. v.)

**CORPUS JURIS CANONICI.** L. Lat. The body of the canon law. 1 *Bl. Com.* 82. See *Canon law*, *Jus canonicum*.

**CORPUS JURIS CIVILIS.** Lat. The body of the civil law, as composed of the Institutes, Pandects, Code and Novels. 1 *Bl. Com.* 81. Sometimes simply termed *Corpus Juris*.

This name was not given to this collection by Justinian, nor by any of the glossators. According to Savigny, it was in use as early as the 12th century. Dionysius Gothofredus, however, was the first who applied it as a title embracing all the collections of Justinian in one work, (A. D. 1604.) 1 *Mackelvey's Civ. Law*, 89, § 98, note.

**CORREDIUM.** L. Lat. A corody. *Spelman*. See *Corodium*.

**CORREI.** Lat. In the civil law. Co-stipulators; joint stipulators. *Heinecc. El. Jur. Civ.* lib. 3, tit. 17. *Hallifax Anal.* b. 2, ch. 16. See *Reus*.

**CORREI DEBENDI.** L. Lat. In Scotch law. Two or more persons bound as principal debtors to another. *Ersk. Inst.* b. 3, tit. 3, § 74.

**CORRODIUM.** L. Lat. A corody. 2 *Inst.* 630.

**CORRUPTION OF BLOOD.** In English criminal law. The extinguishment of the inheritable quality of a person's blood in consequence of attainder for treason or other felony, so that he can neither inherit any estate, nor transmit it to others by descent.\* 2 *Bl. Com.* 251, 256. 1 *Steph. Com.* 408—411. *Litt.* sect. 747. The law on this subject has been considerably modified by the statutes 54 Geo. III. c. 145; 3 & 4 Will. IV. c. 106; and 4 & 5 Will. IV. c. 23. 1 *Steph. Com.* 413. In the United States corruption of blood is abolished. 2 *Kent's Com.* 386.

**CORRUPTIVE.** L. Lat. Corruptly. *Cro. Jac.* 104.

**CORS,** *Corse.* L. Fr. Body. *Britt.* cc. 4, 11, 26, 68. *Cors pur cors*; body for body. *Id.* c. 125.

**CORSEPRESENT.** In English law. A mortuary or customary gift, due to the minister of a parish on the death of a parishioner, was anciently so called from its being brought to church along with the corpse, when it came to be buried. 2 *Bl. Com.* 425, 426. 3 *Steph. Com.* 148. See *M.S.* cited in *Blount*.

**CORSNED.** [from Sax. *cors*, a curse, and *sned*, a cake or piece of bread.] In Saxon law. The morsel of execration; (*panis conjuratus*; *offa execrata*.) A species of ordeal in use among the Saxons, performed by eating a piece of bread over which the priest had pronounced a certain imprecation. If the accused ate it freely, he was pronounced innocent; but if it stuck in his throat, it was considered as a proof of his guilt. *Crabb's Hist. Eng. Law*, 30. 1 *Reeves' Hist.* 21. 4 *Bl. Com.* 345. *Spelman*.

**CORT,** *Court.* L. Fr. Short, limited. *Kelham*.

**CORTIS.** L. Lat. A court or hall. *Spelman*. See *Curtis*.

**CORTULARIUM.** L. Lat. A yard or court adjoining to a country farm; a curtilage. *Cowell*.

**COSE.** L. Fr. A corrupt form of *chose*, (q. v.)

**COSENAGE.** See *Cosinage*.

**COSENING.** In old English law. An offence, mentioned in the old books, where any thing was done deceitfully, whether belonging to contracts or not, which could not be properly termed by any special name. *West Symbol.* part 2, tit. Indictments, sect. 68. The same as the *stellionatus* of the civil law. *Cowell*.

**COSHERING.** In old English law. A feudal prerogative or custom for lords to lie and feast themselves at their tenants' houses. *Cowell*.

**COSIN,** *Cosyn.* L. Fr. [L. Lat. *consanguineus*.] In old English law. A collateral relative by blood, as a brother, sister, uncle, &c. *Litt.* sect. 389, 660.

Any relative in the ascending line above a great grandfather, (*besayle*.) *Theoloall Dig. lib. 9, c. 5, ¶ 28. Stat. Glocest. c. 2. Britt. c. 89. See Cosinage.*

**COSINAGE**, *Cosenage*. L. Fr. [L. Lat. *consanguinitas*.] In old English law and practice. Collateral relationship or kindred by blood; consanguinity. *Co. Litt.* 180 a.

The name of a writ (*breve de consanguineo*.) that anciently lay where a man's great great grandfather, (or *tresayle*, as he was termed,) or collateral relative, beyond certain degrees, (to both of whom the title *cosin* was applied,) was seized of lands, &c., in fee on the day of his death, and afterwards a stranger entered and abated, and so kept out the heir. *F. N. B.* 221. *Reg. Orig.* 226. *Roscoe's Real Act.* 127. 3 *Bl. Com.* 186.

**COST**, (*C'o'st*). L. Fr. This is. *Kelham*. A contraction of *ceo est*.

**COSTAGES**. L. Fr. Costs. *Stat. Westm.* 1, c. 1. *Stat. Glocest.* c. 1. *Britt.* c. 17. Lord Coke derives this word from the verb *conster*, and that again from the verb *constare*; "for these *costages* must *constare* (appear) to the court to be legal costs and expenses." 2 *Inst.* 288.

**COSTE**. L. Fr. A, or the side. *De coste*; from or on the side; collateral. *Britt.* c. 89, 119.

**COSTERA**. L. Lat. [from Fr. *costier*; Lat. *costa*, a side.] In old English law. A coast; sea coast or shore; sea side; (*litus*; *regionis pars mari finitima*.) *Spelman. Towns. Pl.* 224. *Per costeram maris*; by the sea shore. *Magna Charta*, c. 23.

**COSTS**. [L. Lat. *custus, misæ*; Lat. *expensæ litis*; L. Fr. *costages*.] In practice. The expenses which are incurred either in the prosecution or defence of an action, or in any other proceeding at law, or in equity; consisting of the fees of attorneys, solicitors and other officers of court, and such disbursements as are allowed by law.\* *Stat. Glocest.* 6 *Edw. I.* c. 1. 2 *Inst.* 288. *Beames' Costs*, 4. 2 *Tidd's Pr.* 945, *et seq.* *U. S. Digest*, and *Supplement*, Costs.

*Costs between attorney and client* are those which are payable in every case to the attorney or solicitor, by his client, whether he ultimately succeed or not. *Costs between party and party* are those which the defeated party pays to the successful one. *Holthouse. Wharton*. Costs are also either

final or interlocutory. See *Final costs, Interlocutory costs*.

**COSTS DE INCREMENTO**. L. Lat. Costs of increase. See *De Incremento, Increase*.

**COSTS OF THE DAY**. Costs which are incurred in preparing for the trial of a cause on a specified day, consisting of witnesses' fees, and other fees of attendance. *Archb. N. Prac.* 281. *Holthouse*.

**COSTUS**. L. Lat. Cost. *Stat. Westm.* 2, c. 46.

**COTA**, *Chota*. L. Lat. [Sax. *cote*.] In old English law. A cot or hut, (*tugurium*.) *Spelman. Blount*.

**COTAGIUM**. L. Lat. [from *cota*, q.v.] In old English law. A cottage; small house or cot. *Spelman. Shep. Touch.* 10. *Co. Litt.* 56 b. See *Cottage*.

**COTARIUS**. L. Lat. [from *cota*, q.v.] In old English law. A cottager, or cotter. *Spelman. Domesday*.

**COTERELLUS**. L. Lat. In old English law. A cottager. Considered by *Spelman* and others the same with *cotarius*. *Spelman. Co. Litt.* 56 b. But *Cowell* makes the distinction that the *cotarius* had a free socage tenure and paid a stated firm (rent,) in provisions or money, with some occasional customary service; whereas the *coterellus* seemed to have held in mere villenage, and had his person and issue, and goods disposed at the pleasure of his lord. *Cowell, voc. Coterellus*.

**COTLAND, COTSETHLAND**. In old English law. Land held by a cottager, whether in socage or villenage. *Cowell*.

**COTMANNUS**. L. Lat. In old English law. A cotman, or cotter. *Domesday. Spelman*.

**COTSETUS, COTSETHUS**. L. Lat. [Sax. *cotsete*; the inhabitant of a cottage.] In old English law. A cottager who, by servile tenure, was bound to work for the lord. *Cowell. LL. Hen. I.* c. 30. *Spelman, vocc. Cota, Cotarius*.

**COTSETHLAND**. [from Sax. *cote*, a cottage, *set*, or *seth*, a seat, and *land*.] In old English law. The seat of a cottage, including any land belonging to it. *Spelman*.

**COTTAGE.** [L. Lat. *cotagium*, q. v.] A little dwelling house, without land. *Shep. Touch.* 94. *Co. Litt.* 56 b. 1 *Crabb's Real Prop.* 68, 69, § 87. *Cowell*, voc. *Cottage*. Properly, however, a cottage seems to have always had a small portion of land attached to it, (*fundi ascriptam portiunculam*,) as appears also from the terms *cotland*, *cotsethland*, *supra*. *Spelman*. And now, according to good authority, by the grant of a cottage, a curtilage or garden will pass as included. 2 *Ld. Raym.* 1015. 6 *Mod.* 114. 4 *Vin. Abr.* 582. *Shep. Touch.* (by Preston,) 94.

**COTURE.** L. Fr. An enclosure. *Britt.* c. 71.

**COUCHANT.** L. Fr. [from *coucher*, to lie down; Lat. *cubans*, *cubantes*.] In old English law. Lying down. See *Levant*.

**COUNSAILE.** L. Fr. Advice and direction in law. *Artic. sup. Chart.* c. 11.

**COUNSEL.** [L. Fr. *conseil*, *conseill*, *counsel*.] In practice. An advocate, counsellor or pleader. 3 *Bl. Com.* 26. 1 *Kent's Com.* 307. One who assists his client with advice, and pleads for him in open court. See *Advocate*, *Counsellor*, *Pleader*.

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This word has no plural, and is used to denote either one or more counsel. It is by some supposed to be an abbreviation of *counsellor*, but rather seems to be derived from the Norman Fr. *conseil*, which occurs as a distinct word, at an early period, in the sense of *pleader*. *Assizes de Jerusalem*, ch. ix. *Id.* ch. xxvii. *Counsel* is not used as a title of office, like *barrister* and *serjeant* in England, and *counsellor* in the United States, but as a general professional designation; and is particularly applied to a client's professional adviser or advocate (one or more) in a particular matter or suit, e. g. in the expressions *a party's counsel*, and *the counsel in a cause*; in which the use of the term *counsellor* would in strictness be improper. To a certain extent, however, the terms are synonymous. See *Counsellor*. "The counsellor should give his counsel to him with [for] whom he is of counsel." 5 *Co.* 20. See *Of Counsel*.

**COUNSELLOR, COUNSELLOR AT LAW.** [L. Lat. *consiliarius*, *consiliarius in lege*; L. Fr. *conseiller*.] In practice. A person whose occupation and office are to give *counsel* or advice as to the management of suits and other legal business, to

conduct the trial or argument of causes in court, (in which sense the word is synonymous with *advocate*,) and to do any other acts requiring a personal presence there.\* Counsellors are officers of the respective courts in which they are licensed to practice; and the term itself is exclusively an official or professional title, the use of which is now rare in England, although very common in the United States. 1 *Ld. Raym.* 594, 595. See *Counsel*, *Consiliarius*.

**COUNT, Countee.** L. Fr. or Anglo-Norm. [Fr. *comte*; L. Lat. *comes*.] In old English law. An officer who anciently was the chief or governor (*præfectus vel præpositus*,) of a shire in England, which was hence called a *county*, (*comitatus*); an earl. 1 *Bl. Com.* 398. 9 *Co.* 49. 2 *Lev.* 72. See *Comes*, *Comte*.

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This term (*countee* being obviously an Anglicised form of the Fr. *comte*,) was introduced on the Norman Conquest, as a title not only of office but of honor, being the most eminent dignity in the kingdom. *Termes de la ley*. It was after a time, however, superseded by the English *earl*, which still continues as a title of honor, although the earl has now nothing to do with the government of the county, which is devolved on the sheriff or viscount, as he was anciently called, (*vice comes*, the vice count, or earl's deputy.) 1 *Bl. Com.* 398, 116. The term still survives in *countess*, an earl's wife, and *viscount*, the next dignity below an earl. See *Earl*, *Comes*, *County*, *Viscount*.

**COUNT.** L. Fr. & Eng. [L. Lat. *nar-ratio*.] In pleading. A statement of a plaintiff's case in court, being the first in the series of the pleadings in an action;\* a declaration, particularly in a real action. 2 *Reeves' Hist. Eng. Law*, 265, 267. *Co. Litt.* 17 a, 303 a. 3 *Bl. Com.* 293. *En count countant*; in his count counting. *Litt.* sect. 10. The use of this term was anciently confined, for the most part, to real actions, though not exclusively. *Termes de la ley*. *F. N. B.* 16, 60. D. N. *Steph. Pl.* Second Appendix, Note (3.)

A part, section or division of a declaration, embracing a distinct statement of a cause of action. A declaration now usually consists of several of these counts; being either statements of different causes of action; or of the same cause in different forms. *Steph. Pl.* 267, Appendix, Note (56.) *Id.* Second Appendix, Note (3.) *Gould's Pleading*, ch. vi. § 2.

In criminal pleading. A particular charge

in an indictment. *Wharton's Prec. of Indictments*, 12, note; ch. 2.

*Count* is from the Fr. *conte*, a narrative or *tale*, as it was at one time called in England. 3 *Bl. Com.* 293. *Steph. Pl. Appendix*, Note (56.) An ancient book of forms was styled the *novæ narrationes*, or *new talys* (tales.) 3 *Bl. Com.* 297. *Narratio*, the Latin word, has survived in the abbreviation *narr.*, a common term for a declaration. See *Narratio*, *Narr.* The old word *conte* signified any allegation of fact in a cause. *Steph. Pl. ub. sup.* *Count* is still, in strictness, the proper term for a declaration in a real action, although its constant use as a *part* of that pleading has, in a great degree, superseded the original sense. *Id. ibid.* 3 *Steph. Com.* 659. By the new Pleading Rules of the English courts, the use of several counts in the same declaration is prohibited unless a distinct subject matter of complaint is intended to be established in respect of each. 1 *Chitt. Pl.* 414.

To COUNT. [L. Fr. *counter*; L. Lat. *narrare*.] In pleading. To state or relate a plaintiff's case, especially the demandant's claim or count in a real action;\* to declare. 2 *Reeves' Hist. Eng. Law*, 265, 267. 3 *Steph. Com.* 659.

To plead orally; to argue a matter in court; to read or recite there; to recite a count; the peculiar province of a serjeant in the English Court of Common Pleas. Hence the titles of *countor* and *serjeant-countor*, (qq. v.) Passing a recovery at the bar of the Common Pleas was formerly termed *counting at bar*. *Boote's Suit at Law*, 68, note.

This term is frequently applied, in the older English reports, to one of the ceremonies performed in open court on taking the degree of serjeant at law. Lord Raymond, describing a call of serjeants to the bar, observes that after being sworn, "they came to Gray's Inn Hall, where they rehearsed their counts, and were coifed, and then they walked to Westminster, and counted at the Common Pleas, according to custom," &c. 1 *Ld. Raym.* 604. So, on another occasion, he says of the serjeants, that being robed, "they were brought to the bar and counted," &c. 2 *Id.* 769. See *T. Raym.* 430, 478. Sir George Croke, describing the same ceremony, observes of the serjeants that "every of them, after they came to the bar, had several writs and counts, which counts they recited, and after their counts recited and writs read by the

prothonotary, one of the ancient serjeants imparled thereto," &c. *Cro. Jac.* 2. The same reporter, describing Sir Edward Coke's creation as a serjeant, on his being made Chief Justice of the Common Pleas, has recorded that "he was sworn in chancery as serjeant, and afterwards went presently into the treasury of the Common Pleas, and there by Popham, Chief Justice, his party robes were put on, and he forthwith, the same day, was brought to the bar as serjeant; and presently after his writ read and count made, he was created Chief Justice," &c. *Cro. Jac.* 125. But the most minute description of this and other ceremonies attending the creation of serjeants, is given by the same reporter in the introduction to the third volume of his reports. *Cro. Car.* Introd. This characteristic ceremony of *counting* has long been disused. See *Serjeant at law*.

COUNTE. L. F. In old English law. A count or earl. *Britt.* fol. 1.

A county. *Id.* fol. 2.

A county court. *Mirr.* c. 1, sect. 15. *Kelham*.

COUNTEE. L. Fr. An earl. *Litt. R.* 61, 181, 335. See *Count*.

COUNTENANCE. [L. Lat. *contenementum*.] In old English law. Credit or estimation. *Cowell.* 2 *Inst.* 28. See *Contentementum*.

COUNTER. L. Fr. [L. Lat. *narrare*.] To count; to plead. *Ne soit oye en la court le roy a counter pur nulluy*; shall not be heard to plead in the king's court for any man. *Stat. Westm.* 1, c. 29. *Le mester de counter*; the mystery or art of pleading. *Britt.* c. 22.

COUNTER. [L. Lat. *narrator*.] A pleader. See *Counter*.

COUNTER. [L. Lat. *computatorium*.] The name of two prisons formerly existing in London, the Poultry Counter and Woodstreet Counter, for the use of the city, to confine debtors, peace breakers, &c. *Cowell.* *Whishaw.* *Tomlins*.

COUNTER AFFIDAVIT. In practice. An affidavit in opposition, or contradictory to another affidavit; an affidavit made by a party against whom a motion or application is made to a court or judge on affidavit, for the purpose of defeating such motion or application. 1 *Tidd's Pr.* 189. 1 *Burr. Pr.* 344.

**COUNTERFEIT.** [L. Fr. *contrefait* ; L. Lat. *controfactum*.] That which is made in imitation of something, but without lawful authority, or contrary to law ; and with a view to defraud, by passing the false for the true.\* *Wharton's Lex.* Anciently applied to the forging of the great or privy seal. 4 *Bl. Com.* 83.

**COUNTERFEITING.** See *Forgery*.

**COUNTER LETTER.** In the civil law. An instrument in writing, executed by the lender of money to whom property has been conveyed by an absolute deed as security, by which he agrees, on payment of a certain sum, to re-convey the same property to the borrower. 11 *Peters' R.* 351, 354, arg. *Wayne, J., Id.* 386. Both instruments constitute, by the law of Louisiana, the kind of contract denominated an *antichresis*, (q. v.) *Id.* 388.

**COUNTERMAND.** [L. Lat. *contramandatum*, from *contramandare*, q. v.] In practice. A new or opposite direction ; an order made contrary to a former one, for the purpose of avoiding or suspending it ; the revocation of a thing before done, or directed to be done. Thus, a notice of trial or other intended proceeding in a cause, and a writ issued to a sheriff, may be *countermanded* by the attorney who gave or issued it, by a new notice to that effect.

This term was formerly applied to wills, leases, &c. in the sense of revocation. *Termes de la ley.* 4 *Co.* 60, 61. *Cowell.*

**COUNTERPART.** In conveyancing. The corresponding part of an instrument ; a duplicate or copy. Where an instrument of conveyance, as a lease, is executed in parts, that is, by having several copies or duplicates made and interchangeably executed, that which is executed by the grantor is usually called the original, and the rest are *counterparts* ; although where all the parties execute every part, this renders them all originals. 2 *Bl. Com.* 296. *Shep. Touch.* (by Preston) 50. See *Duplicate*.

The term *counterpart* seems derived from the ancient practice of executing indentures and chirographs by writing them twice on the same sheet of parchment, beginning from a space in the middle, (where it was afterwards divided by cutting through;) the parts, when thus written, lying opposite or *counter* to each other. See *Chirograph*, *Indenture*.

**COUNTERPLEA.** [L. Lat. *contrapla-citum*.] In pleading. A plea of an inci-

dental kind, and now of rare occurrence, diverging from the main series of the allegations in a cause. As where a party demandsoyer, if his adversary has any matter of fact to allege as a ground why theoyer cannot be demanded, he may plead such matter, and the allegation is called a counterplea to theoyer. *Steph. Pl.* 72. Counterpleas in the old actions were a kind of replication, and were used particularly as answers to aid prayer. *Termes de la ley. Reg. Plac.* 118. *Cro. Car.* 263. See *Pleading*.

**COUNTER ROLL.** [L. Fr. *contreroule*, *conterrolle* ; L. Lat. *contra rotulus*.] In old English law and practice. A roll kept by an officer as a check upon another officer's roll.\* Sheriffs and coroners were anciently required to keep rolls or records of what was done before them. *Bract. fol.* 121 b, 140 b. *Britt. c.* 1. *Le vicont eit conterrolles ove les coroners auxy bien des appels come des enquests, &c.* ; the sheriff shall have counter rolls with the coroners, as well of appeals as of inquests, &c. *Stat. Westm.* 1, c. 10.

**CUNTEZ.** L. Fr. Count, or reckon. In old practice. A direction formerly given by the clerk of a court to the crier, after a jury was sworn, to *number* them ; and which Blackstone says was given in his time in good English, "*count these*." 4 *Bl. Com.* 340, note (n).

**CUNTOR, Counter, Countour.** L. Fr. and Eng. [L. Fr. *contour*, from *counter* or *conter*, to relate, recite or state orally ; L. Lat. *narrator*.] In old English practice. An advocate or professional pleader ; one who *counted* for his client, that is, related his case, recited his count, or orally pleaded his cause.\* See *To count*. A term applied in the old books to serjeants at law, who are sometimes termed *serjeant countours*. 2 *Inst.* 214. 2 *Reeves' Hist. Eng. Law*, 284, 285. 1 *Bl. Com.* 24, note (t). *Countours sont serjeants sachents la ley del royaume, que servent al common del peuple a pronouncier et defendre les actions en jugement* ; countours are serjeants learned in the law of the realm, who serve the common people to prosecute and defend actions in court. *Mirr. c.* 2, sect. 5. 9 *Co. pref. Stat. Mod. Lev. Fines. Conseillers ou countours.* *Britt. c.* 52.

The *banci narratores* (countours of the bench) mentioned by Matthew Paris (*Hist.* p. 1077) appear to have been serjeants of the Common Pleas ; serjeants having always had the exclusive privilege of practising in that court, which was anciently termed "the Bench." *Steph. Pl. Appendix, Note* (8).

1 *Bl. Com. ub. sup.* See *Bench, Bancus, Serjeant at law, Narrator*. That counting was the peculiar province of serjeants is shown by the fact of its having so long survived as one of the ceremonies observed on taking that degree. See *To count*.

The word *countour* occurs in Chaucer's description of the Frankeleyn:—

A shereve hadde he ben, and a *countour*,  
Was no wher swiche a worthy vavasour.

Some copies, according to Selden, have *coronour* in this passage instead of *countour*, and *coronour* is preferred by the author of the note on 2 *Bl. Com.* 347, for the singular reason that the office of an *accountant* was inconsistent with the character.

COUNTREFAIRE. L. Fr. To counterfeit. *Britt.* c. 4.

COUNTREROULER. L. Fr. A controller. *Britt.* c. 1.

COUNTREVAL. L. Fr. Descending. *Kelham*.

COUNTRY. [L. Lat. *patria*; L. Fr. *pais*.] In pleading and practice. The inhabitants of a district from which a jury is summoned in a cause.\* "To make a certain jury of the country," were words of the old writ of *venire facias*.

A jury, summoned, or to be summoned. In pleading, a defendant "puts himself upon the country," (*ponit se super patriam*.) i. e. refers the trial of his cause to a jury. A "conclusion to the country" is an offer of trial by jury. 3 *Bl. Com.* 315. 3 *Steph. Com.* 589. *Steph. Pl.* 73, 78, 230, 237.

COUNTY. [L. Fr. *counte*; L. Lat. *comitatus*.] A civil division of a state or kingdom, for political and judicial purposes, formerly governed in England by the earl or *count*, from whom it derived its name. *Termes de la ley.* 1 *Bl. Com.* 113, 116. *Crabb's Hist. Eng. Law*, 16. *Co. Litt.* 109 b. It is the same with *shire*, (*scyre*.) which was the corresponding term in Saxon. 1 *Bl. Com.* 116. The county court was sometimes anciently termed the *county*. *Termes de la ley.* *Mirr.* c. 1, sect. 15. 9 *Co. pref.* See *U. S. Digest and Supplement*, County. *U. S. Ann. Dig.* h. t.

COUNTY CORPORATE. A city or town, with more or less territory annexed, having the privilege to be a county of itself, and not to be comprised in any other county: such as London, York, Bristol, Norwich, and other cities in England. 1 *Bl. Com.* 120.

COUNTY COURT. [L. Lat. *curia comitatús*, or *comitatus*; L. Fr. *counte*.] A court of high antiquity in England, incident to the jurisdiction of the sheriff. 2 *Bl. Com.* 35. 3 *Steph. Com.* 395. 4 *Co.* 33. 1 *Reeves' Hist. Eng. Law*, 7. It is not a court of record, but may hold pleas of debt or damages, under the value of forty shillings. 3 *Bl. Com.* 35. The freeholders of the county (anciently termed the *suitors* of the court) are the real judges in this court, and the sheriff is the ministerial officer. *Id.* 36. 1 *Reeves' Hist.* 7. This was formerly a court of great dignity and splendor, but is now fallen to an inferior rank; and even as an ordinary court the resort to it, owing probably to the introduction of courts of request, is not very frequent.\* 3 *Steph. Com.* 396. See *Com. Dig.* County courts, B. 3. *Bac. Ab.* County court.

In the United States, county courts are courts of record of inferior jurisdiction, and held by judges expressly appointed or chosen for the purpose. *Encyc. Americ.* See *U. S. Digest and Supplement*, Courts.

COUNTY PALATINE. [L. Lat. *comitatus palatinus*.] A county in England distinguished by peculiar privileges; and so called from *palatium*, (a palace,) because its owner, whether duke or earl, had in such county royal prerogatives, (*jura regalia*.) as fully as the king had in his palace. 4 *Inst.* 205, 211, 216. There were originally three of these, Chester, Durham and Lancaster, but they are all now in the hands of the crown. *Id. ibid.* 1 *Bl. Com.* 116—119. 1 *Steph. Com.* 120, 121. *Sewell's Law of Sheriff*, 1. 1 *Crabb's Real Prop.* 489, § 630.

COUNTY SESSIONS. In England, are the general quarter sessions of the peace for each county, which are held four times a year. *Wharton's Lex.* *Warren's Law Studies*, 367.

COUPE. L. Fr. Fault; blame. *Britt.* c. 28, 100. *Coupable*; guilty. *Kelham. L. Fr. Dict.*

COURE, Courree, Courge. L. Fr. To run. *Id.* *Courge*; runs. *Courge la distresse*; the distress runs or goes. *Britt.* c. 88.

COURT. L. Fr. and Eng. [L. Lat. *curia*, *curtis*, *placitum*, *judicium*.] A tribunal established for the public administration of justice, (*forum judiciale vel juridicum*;) and composed of one or more judges, who sit for that purpose at certain fixed times and

places, attended by proper officers.\* *Spelman*, voc. *Curia*. See *infra*.

A place where justice is judicially administered. *Co. Litt.* 58. 3 *Bl. Com.* 23.

The persons of the judges so sitting for the administration of justice.

The definition of Lord Coke which makes a court to be merely a *place* of justice, though sufficiently expressive of the original meaning of the term, (see *infra*,) fails obviously to convey its full modern signification. A *place* of meeting, indeed, is of the essence of a court, but *persons* also enter largely into its composition. Accordingly, it is well observed by Sir W. Blackstone, that in every court there must be at least three constituent parts, the *actor*, *reus*, and *judez*; the *actor*, or plaintiff, who complains of an injury done; the *reus*, or defendant, who is called upon to make satisfaction for it; and the *judez*, or judicial power, which is to examine the truth of the fact, to determine the law arising upon that fact; and if any injury appears to have been done, to ascertain and by its officers to apply the remedy. 3 *Bl. Com.* 25. A court may be more particularly described as an organized body with defined powers, meeting at certain times and places for the hearing and decision of causes and other matters brought before it, and aided in this its proper business, by its proper officers, viz. attorneys and counsel to present and manage the business, clerks to record and attest its acts and decisions, and ministerial officers to execute its commands, and secure due order in its proceedings.\*

The term *court* is obviously of Norman origin, being borrowed without change from the French of the middle ages. *Spelman*, voc. *Curia*. *Le haute court*; the high or supreme court. *Assises de Jerusalem*, c. ix. It seems to be derived from the L. Latin *curtis* of an earlier period, which, like *curia*, (the ordinary Latin form of the word,) denoted primarily the hall or palace of a sovereign or lord; and derivatively, (as that was the usual *place* of administering justice,) a court, in the modern sense. See *Curia*, *Curtis*.

COURT OF ADMIRALTY. See *Admiralty*.

COURT OF ARCHES. See *Arches*.

COURTS OF ASSIZE AND NISI PRIUS. Courts in England, composed of two or more commissioners, called judges of assize, (or of assize and *nisi prius*,) who are twice in every year sent by the queen's spe-

cial commission, on circuits all round the kingdom, to try, by a jury of the respective counties, the truth of such matters of fact as are there under dispute in the courts of Westminster Hall. 3 *Steph. Com.* 421, 422. 3 *Bl. Com.* 57. See *Assize*, *Nisi Prius*, *Justices of assize*.

COURT OF ATTACHMENTS. See *Attachments*.

COURT BARON. [L. Lat. *curia baronis*.] An inferior court of civil jurisdiction in England, attached to a manor, being an inseparable incident thereto, and holden by the steward within the manor. 3 *Bl. Com.* 33. 1 *Reeves' Hist. Eng. Law*, 7. 9 *Co. pref.* See *Manor*. It is of two natures; the *court baron* proper, and *customary court*. The former is a court of common law, not of record, and is held before the freeholders who owe suit and service to the manor, such suitors being the judges of the court, the steward acting rather as registrar. 3 *Bl. Com.* 33. 3 *Steph. Com.* 393. 1 *Crabb's Real Prop.* 490, 491, § 631. The most important business of this court formerly was to determine, by writ of right, all controversies relating to the right of lands within the manor; and it may still hold plea of any personal actions of debt, trespass on the case, or the like, where the debt or damages do not amount to forty shillings. 3 *Bl. Com.* 33. 1 *Crabb's Real Prop.* 491—493, §§ 631—634. 3 *Steph. Com.* 393. This court, however, is now fallen into almost entire disuse. *Id.* 394.

The *customary court* is that which appertains entirely to the *copyholders*, in which their estates are transferred by surrender and admittance, and other matters transacted relative to these tenures only. 3 *Bl. Com.* 33. *Co. Litt.* 58 a. The steward is the judge of this court, the suitors acting merely as his assistants. The copyholders attending to their fealty at this court are called the *homage*. 1 *Crabb's Real Prop.* 494, § 635. See *Homage*.

The court baron is supposed by some to be so called, as being the *court* of the *barons*, (*curia baronum*,) or freeholders; *baron* having formerly had the sense of freeholder or freeman. *Co. Litt.* 58 a. 3 *Bl. Com.* 33. The more obvious explanation seems to be that it is the *court* of the *baron* (*curia baronis*,) or lord of the manor, manors being formerly called *baronies*, and their lords *barons*. 4 *Inst.* 268. 2 *Bl. Com.* 90. *Cowell*.

COURT OF CHANCERY. See *Chancery*.

**COURT OF CHIVALRY.** A court formerly held before the lord high constable and earl marshal of England jointly, and afterwards before the latter only, having cognizance of contracts and other matters touching deeds of arms and war, as well out of the realm as within it. 4 *Inst.* 123. 3 *Bl. Com.* 68, 103, 105. It has grown out of use. *Id. ibid.* 4 *Steph. Com.* 329.

**COURTS CHRISTIAN.** [L. Lat. *curiæ christianitatis*.] The ecclesiastical courts in England are often so called, as distinguished from the civil courts. 1 *Bl. Com.* 83. 3 *Id.* 64. 3 *Steph. Com.* 430. 2 *Inst.* 488. *Cowell.* See *Ecclesiastical courts*.

**COURTS OF CONSCIENCE.** See *Conscience*.

**COURT OF COMMON PLEAS.** See *Common Pleas*.

**COURT OF COMMISSIONERS OF SEWERS.** See *Commissioners of sewers*.

**COURT OF DELEGATES.** The great court of appeal in England in all ecclesiastical causes, consisting of delegates (*judices delegati*), appointed by the king's commission, under his great seal, and issuing out of chancery, to represent his royal person, and hear all appeals to him made by virtue of the statute 25 Hen. VIII. c. 19. 3 *Bl. Com.* 66. The judicial committee of the privy council is now substituted for this court. *Stat.* 2 & 3 *Will.* IV. c. 92; 3 & 4 *Will.* IV. c. 41, s. 3; 6 & 7 *Vict.* c. 38. 3 *Steph. Com.* 432, 434.

**COURT OF THE DUCHY OF LANCASTER.** A court of special jurisdiction, held before the chancellor of the duchy or his deputy, concerning all matters of equity relating to lands holden of the king in right of the duchy of Lancaster. 3 *Bl. Com.* 78. 3 *Steph. Com.* 446.

**COURTS ECCLESIASTICAL.** See *Ecclesiastical courts*.

**COURT OF EQUITY.** See *Equity*, *Chancery*.

**COURT OF EXCHEQUER.** See *Exchequer*.

**COURT HAND.** In old English practice. The peculiar hand in which the records of courts were written from the earliest period down to the reign of George II.

Its characteristics were great strength, compactness, and undeviating uniformity; and its use undoubtedly gave to the ancient record its acknowledged superiority over the modern, in the important quality of durability. Sir James Burrow, speaking of the statute 4 Geo. II. c. 26, thus forcibly contrasts this style of writing with that by which it was superseded. "A statute now took place for converting them [common law pleadings] from a fixed dead language to a fluctuating living one; and for altering the strong, solid, compact hand, (calculated to last for ages,) wherein they were used to be written, into a species of handwriting so weak, flimsy and diffuse, that many a modern record will hardly outlive its writer, and few perhaps will survive much above a century." 1 *Burr.* pref. iv. Sir W. Blackstone mentions another disadvantage attending the disuse of the old hand, "whereby the reading of any record that is fifty years old is now become the object of science, and calls for the help of an antiquarian." 3 *Bl. Com.* 323.

The writing of this hand, with its peculiar abbreviations and contractions, constituted, while it was in use, an art of no little importance, being an indispensable part of the profession of *clerkship*, as it was called. Two sizes of it were employed, a large and a small hand; the former, called *great court hand*, being used for initial words or clauses, the *placita* of records, &c. *Towns. Pl. passim.* See *Record*.

**COURT OF HUSTINGS.** The county court of London, held before the mayor, recorder and sheriff, but of which the recorder is, in effect, the sole judge. No actions can be brought in this court that are merely personal. 3 *Steph. Com.* 449, note (l). See *Hustings*.

**COURT LEET.** [L. Lat. *curia leta*; the court of the leet.] A court of record in England, held once or twice in every year within a particular hundred, lordship, or manor before the steward of the leet, for the preservation of the peace, and the punishment of all trivial misdemeanors. Its original intent was to *view the frankpledges*, that is, the freemen of the liberty who anciently were all mutually pledges for the good behaviour of each other; and hence it was called, by the Anglo-Normans, the view of frank pledge, (*visus franci plegii*.) 4 *Bl. Com.* 273. *Spelman*, voc. *Leta*. 4 *Inst.* 261. *Mirr.* c. 1, § 10. 2 *Hawk. P. C.* 72. 1 *Crabb's Real Prop.* 495, § 637, et seq. *Tomlins*. It has, however, latterly fallen into almost total desuetude, its busi-



ness having, for the most part, gradually devolved upon the quarter sessions. 4 *Steph. Com.* 340. See *Leet, Frank pledge, View of frank pledge.*

**COURT OF MARSHALSEA.** See *Marshalsea.*

**COURT MARTIAL.** A court held in the military and naval service, for the trial and punishment of offences against the regulations of the service.\* 1 *Bl. Com.* 415. *Crabb's Hist. Eng. Law*, 553. The court of the constable and marshal was the earliest military or martial court in England, but courts martial, in their present form, do not appear to have been introduced before the reign of James II. *Id. ibid.*

**COURT OF PECULIARS.** A spiritual court in England, being a branch of, and annexed to the court of Arches. It has a jurisdiction over all those parishes dispersed through the province of Canterbury, in the midst of other dioceses, which are exempt from the ordinary's jurisdiction, and subject to the metropolitan only. All ecclesiastical causes arising within these *peculiar* or exempt jurisdictions, are originally cognizable by this court, from which an appeal lies to the court of Arches. 3 *Steph. Com.* 431. 4 *Reeves' Hist. Eng. Law*, 104.

**COURT OF PIEDPOUDRE, PIE-POWDERS, or PYPOWDERS.** [L. Lat. *curia pedis pulverizati.*] A court of record in England, incident to every fair and market, of which the steward of him who owns or has the toll of the market, is the judge. 6 *Co.* 12. 9 *Id.* pref. Its jurisdiction extends to administer justice for all commercial injuries done in that very fair or market, and not in any preceding one; so that the injury must be done, complained of, heard and determined within the compass of one and the same day, unless the fair continues longer. It has cognizance of all matters of contract that can possibly arise within the precincts of that fair or market, and from it a writ of error lies, in the nature of an appeal to the courts at Westminster. 3 *Bl. Com.* 32, 33. It is the lowest, and at the same time the most expeditious court of justice known to the law of England, but has fallen into disuse, and is now in a manner forgotten. *Id. ibid.* 3 *Steph. Com.* 438. These courts do not seem to have been exclusively peculiar to fairs and markets, as they might be held by custom in cities, boroughs, and vills, for the collection of debts, &c. *Cro. Jac.* 313. *Cro. Car.* 46. 2 *Salk.* 604.

The derivation of the word *pedpoudre*, (from Fr. *ped*, a foot, and *poudre*, dust,) seems obvious enough, though, as to the reason of its application to this kind of court, there are different opinions. By some it is supposed to have been so called from the *dusty feet* of the suitors, the court being most usually held in summer. *Cowell. Blount.* By others, from the expedition of its proceedings, justice being done as speedily as *dust* can fall from the *foot*. 4 *Inst.* 272. Others have supposed it to mean the court of petty chapmen, (from O. Fr. *ped puldreux*, Lat. *pede pulverosus*, a pedler, or travelling merchant,) who usually resorted to fairs or markets. 3 *Bl. Com.* 32. *Barrington on the Statutes*, 337, cited *ibid.* *Skene de Verb. Signif. voc. Pede pulverosus.* This last supposition seems confirmed by Bracton's use of the term *pepoudrous* to denote that kind of speedy justice which persons of this description were entitled to; (*quibus exhibetur justitia pepoudrous.*) *Bract.* fol. 334. *Blount* considers this to have been the same with that kind of court called, among the Saxons, *ceaping gemot*. See *Piedpoudre, Farand-man.*

**COURT OF POLICIES OF ASSURANCE.** A court established by statute 43 Eliz. c. 12, to determine in a summary way all causes between merchants, concerning policies of insurance. *Crabb's Hist. Eng. Law*, 503.

**COURT OF RECORD.** A court where the acts and judicial proceedings are enrolled in parchment [or paper] for a perpetual memorial and testimony; and which has power to fine and imprison for contempt of its authority.\* 3 *Steph. Com.* 383. 3 *Bl. Com.* 24. 1 *Wooddes. Lect.* 59, 60. Called in law French, *Court que porte record*; a court which bears record. *Britt.* c. 68. See *Record.*

Courts *not of record* are those of inferior dignity, which have no power to fine or imprison, and in which the proceedings are not enrolled or recorded. 3 *Steph. Com.* 384.

**COURT OF REGARDS.** One of the forest courts, held every third year for the lawing or expeditation of dogs. 3 *Bl. Com.* 72. *Crabb's Hist. Eng. Law*, 155.

**COURT OF REQUESTS.** A court, not of record, constituted by act of parliament in the city of London, and other towns, for the recovery of small debts. The ordinary constitution of these courts, which are generally for causes of debt to the

amount of 40s. only, but often to the amount of 5*l.*, is to examine in a summary way, and without jury, by the oath of the parties or other witnesses, and make such order therein as is consonant to equity and good conscience. 3 *Steph. Com.* 451, and statutes there cited. 3 *Bl. Com.* 81, 82.

**COURT OF STAR CHAMBER.** [L. Lat. *curia camera stellata*.] A court of very ancient original in England, but new modelled by statutes 3 Hen. VII. c. 1, and 21 Hen. VIII. c. 20; having jurisdiction over riots, perjuries, misbehaviour of sheriffs, and other notorious misdemeanours, which were tried without the intervention of a jury. After having greatly abused its powers, it was abolished by statute 16 Car. I. c. 10. 4 *Bl. Com.* 266, 267. *Lamb. Archaion.* 158. 4 *Reeves' Hist. Eng. Law*, 146. See *Star Chamber*.

**COURT OF THE STEWARD AND MARSHAL.** A high court, formerly held in England by the steward and marshal of the king's household, having jurisdiction of all actions against the king's peace within the bounds of the household for twelve miles, which circuit was called the *verge*. *Crabb's Hist. Eng. Law*, 185. It had also jurisdiction of actions of debt and covenant, where both the parties were of the household. 2 *Reeves' Hist. Eng. Law*, 235, 247. This court had the same origin with the King's Bench, being like it an emanation from the *curia regis*, and obliged to attend the king *ubicunque fuerit in Anglia*. *Crabb's Hist.* 415. The steward was the judge of this court, and the marshal the ministerial officer.\* *Id.* 185. 2 *Reeves' Hist.* 235, 247, 249, 420.

**COURT OF WARDS AND LIVERIES.** A court of record, established in England in the reign of Henry VIII. For the survey and management of the valuable fruits of tenure, a court of record was created by stat. 32 Hen. VIII. c. 46, called the *court of the King's Wards*. To this was annexed, by stat. 33 Hen. VIII. c. 22, the *court of Liveries*; so that it then became the court of *Wards and Liveries*. 4 *Reeves' Hist. Eng. Law*, 258. This court was not only for the management of *wards*, properly so called, but also of idiots and natural fools in the king's custody, and for licenses to be granted to the king's widows to marry, and fines to be made for marrying without his license. *Id.* 259. It was abolished by statute 12 Car. II. c. 24. *Crabb's Hist. Eng. Law*, 468. *Blount*, voc. *Wards and Liveries*.

**COURT LANDS.** [L. Lat. *curtiles terræ*.] In English law. Demains, or lands kept in demesne, i. e. in the lord's own hands, to serve his family. A term derived from the feudal law in which *terræ curtiles*, or *intra curtem*, signified lands appropriate to the court (*curtis*), or house of the lord. *Spelman*, *Feuds*, c. 5. The same with what was called by the Saxons *inland*, being that which lay most convenient for the lord's mansion house, and therefore kept by the lords in their own hands, for the support of their family and for hospitality. The Normans called these lands *terræ dominicales*, the demains, or lord's lands. *Cowell*, voc. *Court lands*, *Curtiles terræ*. See *Court*, *Curtis*, *Demesne*.

**COUSIN.** [Fr. *cosin*; L. Lat. *consanguineus*.] A kinsman or blood relation. Applied in the old books to a brother, sister, or uncle. *Litt. sect.* 108, 123, 389. *Co. Litt.* 80 b, 81 b. Cousin and heir, (abbreviated *cous. et hæc.*) is an expression of frequent occurrence. *Dyer*, 79 a. *Hubback's Evid. of Success.* 586. In Devonshire the word is still used to signify a nephew. 1 *Vesey Jr.* 73. *Hubback*, 427, note.

**COUSINAGE.** See *Cosinage*.

**COUST.** L. Fr. Cost, charge. *Kelham*.

**COUSTOUMIER, Coustumier, Coutumier.** Fr. A collection of customs, usages and forms of proceeding in the old law of France. The most celebrated of these were the *Coutumier* of France, called the *Grand Coutumier*, and the *Coutumier de Normandie*, or *Grand Coutumier de Normandie*. *Crabb's Hist. Eng. Law*, 69. *Butler's Note* 77, lib. 3, *Co. Litt.* See *Grand Coutumier*.

**COUSTUM, Coutum.** L. Fr. [from *coust*, price, charge.] Toll or tribute. 1 *Bl. Com.* 314, note.

**COUTHUTLAUGH.** Sax. [from *couth*, knowing, and *utlaugh*, an outlaw.] In Saxon and early English law. A person who willingly and knowingly received an outlaw, and cherished or concealed him; for which offence he was anciently subject to the same punishment as the outlaw himself. *Bract.* fol. 128 b. *Spelman*.

**COUVREFEU.** L. Fr. Curfew. *Kelham*. See *Curfew*.

**COVENABLE.** L. Fr. and Eng. [Lat.

*rationabilis.*] Convenient, becoming, fit or suitable. *Stat. Westm.* 1, pr. *Stat.* 4 *Hen.* VIII. c. 12. Also written *convenable*. *Stat.* 27 *Edw.* III. st. 2, c. 17. *Cowell.*

**COVENANT.** [from L. Fr. *convenant*, from *convenir*, to agree; L. Lat. *conventio*.] In conveying. The agreement or consent of two or more by deed in writing, sealed and delivered, whereby either or one of the parties promises to the other that something is done, or shall be done. *Shep. Touch.* 160. *Termes de la ley.* *Plowd.* 308.—A promise by deed. 2 *Steph. Com.* 108.—A species of express contract contained in a deed, to do a direct act, or to omit one. 3 *Bl. Com.* 155.

This term is not usually employed as descriptive of any particular kind of deed, but is applied to those clauses of agreement contained in any instrument under seal, as a deed, lease, &c., whereby either party stipulates for the truth of certain facts, or binds himself to perform or give something to the other.\* 2 *Bl. Com.* 304. As a covenant by a grantor that he has a right to convey, that the grantee shall have quiet possession; and by a lessee that he will pay the rent, keep the premises in repair, &c. *Id. ibid.* 2 *Hilliard's Real Prop.* 372, *et seq.*

**COVENANT IN LAW, or Implied covenant.** A covenant implied by law from certain words in a deed which do not express it. 1 *Archb. Nisi Prius*, 250. Thus, from the words *concessi* (have granted) or *demisi* (have demised) in a lease, a covenant for quiet enjoyment may be implied. *Spencer's case*; 5 *Co.* 16. *Shep. Touch.* 160. *Termes de la ley.* 1 *Man. & Gr.* 195. 1 *Steph. Com.* 455, note (g). So, from the word *grant* in an assignment, the like covenant may be implied. *Carth.* 98. 9 *Ad. & El.* 532. For the American law, see 2 *Hilliard's Real Prop.* 365—367.

**COVENANT IN DEED**, called also *Covenant in fact* (Fr. *covenant en fait*), and *covenant expressed*. A covenant expressed in words, or inserted in a deed in specific terms.\* *Termes de la ley.* *Shep. Touch.* 160. There is no set form of words necessary to constitute a covenant; the usual form is, that the covenantor, "for himself, his heirs, executors and administrators, covenants, promises and agrees to and with [the covenantee,] his executors, administrators and assigns, that," &c. 1 *Archb. Nisi Prius*, 250. *U. S. Digest*, Covenant. The formal word "covenant" itself is not absolutely essential for this purpose. *Bouvier*,

*voc. Covenant*, pl. 10, and cases there cited. 2 *Hilliard's Real Prop.* 364.

**COVENANT INHERENT.** A covenant which is conversant about the land, and knit to the estate in the land; as that the thing demised shall be quietly enjoyed, shall be kept in reparations, shall not be aliened, &c. *Shep. Touch.* (by Preston) 161.

**COVENANT COLLATERAL.** A covenant which is conversant about some collateral thing that doth nothing at all, or not so immediately concern the thing granted; as to pay a sum of money in gross, &c. *Shep. Touch.* 161.

**COVENANT REAL.** A covenant in a deed binding the heirs of the covenantor, and passing to assignees, or to the purchaser. 2 *Bl. Com.* 304. 4 *Kent's Com.* 471, 472. A covenant which runs in the realty so with the land, that he that hath the one, hath or is subject to the other. *Shep. Touch.* 161. It is thus distinguished from a *personal* covenant, which affects only the covenantor, and the assets in the hands of his representatives after his death. 4 *Kent's Com.* 470. The covenants in a deed that the grantor is lawfully seised, and has good right to convey, and that the land is free from incumbrance, are personal covenants, not running with the land; the covenant for quiet enjoyment, and the covenant of warranty, are in the nature of real covenants. 4 *Id.* 471. But see *Id.* 472.

In the old books, a covenant real is also defined to be a covenant by which a man binds himself to pass a thing real, as lands or tenements. *Termes de la ley.* 3 *Bl. Com.* 156.

**COVENANT RUNNING WITH LAND.** A covenant which goes with the land, [conveyed by the deed in which it is expressed,] as being annexed to the estate, and which cannot be separated from the land, and transferred without it. 4 *Kent's Com.* 472, note.—A covenant is said to run with the land, when not only the original parties [to the deed of conveyance] or their representatives, but each successive owner of the land, will be entitled to its benefit, or be liable, (as the case may be,) to its obligation. 1 *Steph. Com.* 455, and note (r). *Burton's Real Prop.* 157. Or, in other words, it is so called when either the liability to perform it, or the right to take advantage of it, passes to the assignee of the land. 1 *Smith's Leading Cases*, 27, note. *Spencer's case*; 5 *Co.* 16 a. 4 *Kent's Com.* 470

—473. See 17 *Wendell's R.* 136. *U. S. Digest and Supplement*, Covenant.

A covenant to pay rent, to produce title deeds, or for renewal, are covenants which run with the land. 4 *Kent's Com.* 473.

**COVENANT TO STAND SEISED TO USES.** A species of conveyance by which a man seised of lands covenants, in consideration of blood or marriage, that he will stand seised to the use of his child, wife, or kinsman, for life, in tail or in fee. 2 *Chitt. Bl. Com.* 338, and notes. On executing this conveyance, the other party becomes seised of the use of the land, and the statute of uses immediately operates, and annexes the possession to the use. See *Use, Seisin to a use*. This conveyance has the same force and effect as a common deed of bargain and sale; but the great distinction between them is, that the former can only be made use of among near domestic relations, for it must be founded on the consideration of blood or marriage. 4 *Kent's Com.* 492, 3. It is said to be no longer in use in England. 1 *Steph. Com.* 491, 492. *Id.* 333. But it is not unknown in practice in this country. 16 *Johns. R.* 515. 3 *New Hamp. R.* 239. See 2 *Hilliard's Real Prop.* 312, *et seq.*

**COVENANT.** In practice. The name of a writ, or action (L. Lat. *breve de conventionione*,) that anciently lay for non-performance of any covenant in writing. *Reg. Orig.* 165—167. *F. N. B.* 145. It might be brought for the recovery of land, or any thing issuing out of lands, or of moveables. *Crabb's Hist. Eng. Law*, 214, 290. According to Mr. Reeves, it was first given by the statute of Wales, (*statutum Walliæ*,) and he says that no forms of it are mentioned by Bracton or Fleta. 2 *Reeves' Hist. Eng. Law*, 262. Such a writ, however, is clearly mentioned by Bracton in more than one passage. *Si quis a conventionione recedat, succurritur alteri parti per actionem de conventionione*; if any one withdraw from [refuse to perform] his covenant, the other party has a remedy by an action of covenant. *Bract.* fol. 34. *Per breve de conventionione.* *Id.* fol. 220. *Crabb's Hist. Eng. Law*, 214, 290. 3 *Bl. Com.* 156.

**COVENANT.** In practice. The name of one of the modern forms of actions *ex contractu*, which lies for the recovery of damages for breach of a covenant, or contract under seal. 1 *Archb. Nisi Prius*, 250. *Browne on Actions*, 352. 1 *Chitt. Pl.* 115.

**COVENANTOR.** The party who makes a covenant. *Shep. Touch.* 160.

**COVENANTEE.** The party to whom a covenant is made. *Shep. Touch.* 160.

**COVENT.** Used in the old books for convent. *Litt.* sect. 133. *Co. Litt.* 94 a, b. *Cowell.* The omission of the letter *n* after the vowel *o* was a very common mode of contraction both in Latin and French; as *covenantus* for *conventus*; *covenable* for *convenable*. Hence the English word *covenant* for the Fr. *convenant*. See *Contraction*.

**COVENTRY ACT.** The English statute 22 & 23 Car. II. c. 1, enacted for the punishment of the offence of cutting off or disabling a limb or member, with intent to maim or disfigure. It was so called from being occasioned by an assault on Sir John Coventry in the street. 4 *Bl. Com.* 207. *Crabb's Hist. Eng. Law*, 528. This, with other statutes on the same subject, is now repealed by 7 & 8 Geo. IV. c. 27, and 9 Geo. IV. c. 31, which latter act is itself repealed, as far as its provisions relate to this subject, by 7 Will. IV., and 1 Vict. c. 85. 4 *Steph. Com.* 126, note.

**COVERT.** Fr. & Eng. [Fr. *couvert*, from *couvrir*, to cover; L. Lat. *co-opertus*.] Covered, protected, sheltered. A *pound covert* is one that is close or covered over, as distinguished from *pound overt*, which is open overhead. *Co. Litt.* 47 b. 3 *Bl. Com.* 12. A thicket or other shelter (*latibulum*) for wild animals in a forest, is called a *covert*, (*co-opertum*, q. v.) *Spelman.* 16 *M. & W.* 569. A *feme covert* is so called, as being under the wing, protection or cover of her husband. 1 *Bl. Com.* 442. See *Feme covert*, *Overt*.

**COVERT BARON, or COVERT DE BARON.** L. Fr. Under the protection of a husband; married. 1 *Bl. Com.* 442. *La feme que est covert de baron*; the woman which is covert of a husband. *Litt.* sect. 670. See *Baron*, *Baron & Feme*.

**COVERTURE.** [from *covert*, q. v.] A covering; a state of being covered or protected; or, according to Lord Coke, a state of subjection or dependence. *Co. Litt.* 112 a. The condition of a woman during marriage is so called. 1 *Bl. Com.* 442. 2 *Steph. Com.* 298. *Cowell.*

**COVIN.** [L. Lat. *covina*.] A secret assent or agreement determined in the hearts of two or more, to the prejudice of another.

Mountague, C. J., *Plowd.* 54. *Termes de la ley.* Co. Litt. 357 b.

COVINOUS. Deceitful, fraudulent.

CRAIRE. See *Creier*.

CRANAGE. [L. Lat. *cranagium*.] In English law. A liberty to use a crane for drawing up wares or goods out of any vessel at any creek or wharf, and to make profit of it. *Termes de la ley.* Cowell.

The money taken for such work. *Id.*

CRASPICE. See *Crassus*.

CRASSUS, *Crassa*. Lat. [Fr. *grosse*.] Large, gross. *Crassus piscis*; (*craspice*;) large fish. *Bract.* fol. 55 b. Called in another place, *grossus piscis*; *sicut balæna, sturgio et alii pisces regales*; (the whale, sturgeon and other royal fish.) *Id.* fol. 14, 120. These were called royal fish, as belonging to the king, when either thrown ashore, or caught near the coast. 1 *Bl. Com.* 290.

CRASTINUM. Lat. [from *cras*, to-morrow.] The morrow; the day after. See *Crastino*.

CRASTINO. L. Lat. In old English practice. On the morrow. A title formerly given to the return days of writs, days in bank, or appearance days in the courts at Westminster. 3 *Bl. Com.* 277. 2 *Reeves' Hist. Eng. Law*, 56, 57.

*Crastino animarum*; (on the morrow of All Souls;) one of the return days in Michaelmas Term, and the first day of the term. *Crastino purificationis beate Mariæ virginis*; (on the morrow of the purification of the blessed virgin Mary;) one of the return days in Hilary term. *Crastino ascensionis Domini*; (on the morrow of the Ascension;) one of the return days in Easter term. *Crastino sanctæ Trinitatis*; (on the morrow of the holy Trinity;) one of the return days in Trinity term; and the first day of the term. 2 *Reeves' Hist. ub. sup.* 1 *Tidd's Pract.* 106.

CRAVEN, *Cravent*, *Cravant*. [from Sax. *cræfan*, to crave, beg or implore.] In old English law. A word of obloquy and disgrace, in the ancient trial by battel, on the uttering of which by either champion, he was considered as yielding the victory to his opponent, and was condemned, as a recreant, *amittere liberam legem*, [to lose his frank-law,] that is, to become infamous, and not to be accounted a free and lawful man, (*liber et legalis homo*;) being supposed by the court to be proved forsworn, and therefore never

to be put upon a jury or admitted as a witness in any cause. 3 *Bl. Com.* 340. 4 *Id.* 348. 4 *Steph. Com.* 415. The word is still popularly used in the same dishonorable sense. See *Battel*, *Champion*, *Recreant*.

CREAMUS. Lat. [from *creare*, to create.] We create. One of the words by which a corporation in England was formerly created by the king. 1 *Bl. Com.* 473.

CREANCE. L. Fr. [from *creier*, to believe.] Belief; persuasion; trust; credit; faith. *L. Fr. Dict.*

CREANCER, *Creansor*, *Creainsour*. L. Fr. [from *creance*, q. v.] One who trusts or gives credit; a creditor. *Britt.* c. 28, 78.

CRECA, *Creccum*. L. Lat. A creek or landing place. *Towns. Pl.* 62. *Cowell. Plowd.* 1.

CREDIBLE. [Lat. *credibilis*, from *credere*, to believe, or trust.] In the law of evidence. To be believed; entitled to credit; worthy of belief. A term applied to a witness after his evidence is given. This term is never used as synonymous to *competent*. When applied to testimony, it presupposes the evidence given. Lord Mansfield, 1 *Burr.* 414, 417. After the competence of a witness is allowed, the consideration of his *credibility* arises, and not before. *Id. ibid.* 3 *Bl. Com.* 369.

CREDITOR. Lat. & Eng. [from *credere*, to trust.] One who gives or has given credit to another; one who trusts another; one to whom a debt is due.\*

In a larger sense, one to whom any obligation is due. *Creditorum appellatione non hi tantum accipiuntur qui pecuniam crediderunt, sed omnes quibus ex qualibet causa debetur.* *Dig.* 50. 16. 11.

CREDITUS. Lat. Believed; trusted. *Male creditus*; ill thought of; in bad repute or credit. *Bract.* fol. 116.

CREIER, *Creyer*, *Crere*, *Crier*, *Craire*. L. Fr. To believe, to give credit to; to confide in; to trust; to entrust with. *Kelham.* *L. Fr. Dict.* *Britt.* c. 4.

CREMENTUM COMITATUS. L. Lat. In old English law. The increase of the county. The sheriffs of counties anciently answered in their accounts for the *improvement* of the king's rents above the ancient vicontiel rents, under this title. *Hale's Sheriffs' Accounts*, 86. *Wharton's Lex.*

**CREPARE OCULUM.** L. Lat. In Saxon law. To put out an eye; which had a pecuniary punishment of fifty shillings annexed to it. *Wharton's Lex.*

**CREPIDO.** Lat. A creek. *Towns. Pl.* 195.

**CREPUSCULUM.** Lat. Daylight or twilight; the light which continues after the setting, or precedes the rising of the sun.\* 4 *Bl. Com.* 224. 4 *Steph. Com.* 147.

**CRETINUS.** L. Lat. A sudden stream or torrent. *Cowell.*

**CREW.** In maritime law. A ship's company, embracing all the officers, as well as the common seamen. *Story, J., 3 Sumner's R.* 209, 213, 214. This is the ordinary sense of the word. *Id.* 216.

In a stricter sense, the officers and common seamen of a vessel, excluding the master. *Id.* 214.

In the strictest sense, the common seamen only, excluding the master and officers. *Id. ibid.* See *Id.* 216.

**CREW LIST.** In maritime law. A list of the crew of a vessel; one of a ship's papers. This instrument is required by act of Congress, and sometimes by treaties. *Act of Congress*, March 3, 1813. It is necessary for the protection of the crews of every vessel, in the course of the voyage, during a war abroad. *Jacobsen's Sea Laws*, 66, 69, note.

**CRIE.** L. Fr. A proclamation. *Britt.* c. 2.

A cry, or outcry. *Crie de pays*; the cry of the country; hue and cry. *Stat. Westm.* 1, c. 9. See *Cry de pais.*

**CRIER.** L. Fr. To proclaim; to make proclamation. *Kelham.*

To read or recite aloud. See *Criez la peez.*

**CRIER.** [L. Fr. *criour.*] An officer of a court, whose duty is to make proclamation of the opening and adjournment of the court; to call parties, jurors and witnesses in causes; to assist in the administration of oaths, and to perform other incidental services.

**CRIEZ LA PEEZ.** L. Fr. Rehearse the concord, or peace. A phrase used in the ancient proceedings for levying fines. It was the form of words by which the justice before whom the parties appeared, di-

rected the serjeant or countor in attendance to recite or read aloud the concord or agreement between the parties, as to the lands intended to be conveyed. *Stat. Modus Levandi Fines*, 18 *Edw. I.* st. 4. 2 *Inst.* 510. 2 *Reeves' Hist. Eng. Law*, 224, 225. *Crabb's Hist.* 179. See *Concord, Countor, Fine.*

**CRIM. CON.** An abbreviation of *Criminal conversation*, (q. v.)

**CRIME.** [Lat. *crimen.*] An act committed or omitted, in violation of a public law, either forbidding or commanding it. 4 *Bl. Com.* 5.—A breach or violation of some public right or duty due to a whole community, considered as a community in its social aggregate capacity; as distinguished from a civil injury.\* *Id. ibid.* See *Civil injury.*—The violation of a right, when considered in reference to the evil tendency of such violation, as regards the community at large. 4 *Steph. Com.* 55. 1 *Id.* 127, 128. In this sense, crimes include misdemeanours.

In a narrower sense, a crime is distinguished from a misdemeanour, as being an offence of a deeper and more atrocious dye, [and usually amounting to a felony.] 4 *Bl. Com.* 5. See *Felony, Misdemeanour.*

In New-York, the terms "crime" and "offence," have been declared to mean "any offence for which any criminal punishment may by law be inflicted." 2 *Rev. Stat.* [702, § 32,] 587, § 33. This definition has been adopted by Mr. Warren. *Law Studies*, 355, (Am. ed.)

**CRIMEN.** Lat. (plur. *crimina.*) A crime. See *Crime.*

In the civil law. An accusation. *Inst.* 1. 26, pr. *Cooper's Notes in loc. Heincc. El. Jur. Civ. lib.* 1, tit. 26, § 302.

**CRIMEN FALSI.** Lat. In the civil law. The crime of falsifying; which might be committed either by writing, as by the forgery of a will or other instrument; by words, as by bearing false witness, or perjury; and by acts, as by counterfeiting or adulterating the public money, dealing with false weights and measures, counterfeiting seals, and other fraudulent and deceitful practices. *Dig.* 48. 10. *Hallifax Anal.* b. 3, ch. 12, num. 56—59.

In the common law, this term is also used, but in no very precise or determinate sense. In the ancient law of England it was employed to denote the making of false charters, false measures, false money,

and other falsifications. 1 *Reeves' Hist. Eng. Law*, 200. 2 *Id.* 8, 9. *Glanv.* lib. 14, c. 7. More particularly it was used to signify the two crimes of counterfeiting or falsifying the king's seal, and of making false money, (including the reduction of the value of genuine coin, as by clipping.) *Bract.* fol. 104 b, 119 b. *Fleta*, lib. 1, c. 23.

In modern law its predominant signification is *forgery*; though it includes also perjury and offences of a kindred character. 4 *Bl. Com.* 89, 247. 4 *Steph. Com.* 89, 247. But it appears never to have been employed in the extensive sense given to it by the civil law. 1 *Greenleaf on Ev.* § 373, and note. *Wilde, J.*, 11 *Metcalf's R.* 302.

**CRIMEN INCENDII.** L. Lat. In old criminal law. The crime of burning, (*Sax. bernet*;) which included not only the modern crime of arson, (or burning of a house,) but also the burning of a man, beast or other chattel. *Britt.* c. 9. *Mirr.* c. 1, sect. 8. *Crabb's Hist. Eng. Law* 308. See *Arson*.

**CRIMEN LÆSÆ MAJESTATIS.** Lat. In criminal law. The crime of injuring majesty; high treason. *Glanv.* lib. 1, c. 2. *Bract.* fol. 118, 119. 4 *Bl. Com.* 75. A term used by the ancient writers on English law to denote any offence affecting the king's person or dignity. *Crabb's Hist. Eng. Law*, 302. 2 *Reeves' Hist.* 6. Called also *lese-majesty*, and sometimes simple *majestie*.

It is borrowed from the civil law, in which it signified the undertaking of any enterprise against the emperor or the republic. *Inst.* 4. 18. 3. See *Lese Majesty*.

**CRIMINAL CONVERSATION.** Adultery; unlawful intercourse with a wife.

**CRIMINAL INFORMATION.** In English criminal law. A proceeding at the suit of the king, without a previous indictment or presentment by a grand jury. 4 *Bl. Com.* 308. *Cole on Criminal Informations*.

**CRIMINALIS.** Lat. [from *crimen*, q. v.] Criminal. *Placitorum aliud est criminale, aliud civile.* *Glanv.* lib. 1, c. 1. *Placitorum alia criminalia, et alia civilia*; of actions some are criminal and others civil. *Bract.* fol. 101 b.

In *criminalibus sufficit generalis malitia intentionis, cum facto paris gradus.* In criminal cases, general malice of intention is sufficient, if followed by an act of equal

or corresponding degree. *Bacon's Max.* 65, regula 15. All crimes have their conception in a corrupt intent, and have their consummation and issuing in some particular fact, which, though it be not the fact at which the intention of the malefactor levelled, yet the law giveth him no advantage of that error, if another particular ensue of as high a nature. *Id. ibid.* Therefore, if an poisoned apple be laid in a place to poison J. S., and J. D. cometh by chance and eateth it, this is murder in the principal that is actor; and yet the malice *in individuo* was not against J. D. *Id. ibid.*

**CRIMINALITER.** Lat. [from *criminalis*.] Criminally. *Inst.* 4. 4. 10. *Bract.* fol. 101 b, 102.

**CROCKARDS, Crocards.** A foreign coin of base metal, prohibited by statute 27 Edw. I. st. 3, from being brought into the realm. 4 *Bl. Com.* 98. *Crabb's Hist. Eng. Law*, 176.

**CROFT.** [L. Lat. *croftum, croftus,crofta, cruftum, crufta*.] In old English conveyancing. A small piece of ground adjoining a dwelling house, and enclosed for pasture or arable, or any particular use; a close. *Glanv.* lib. 8, c. 3. *Cowell. Spelman. Blount.* The same with what was formerly called a *pightel*, (q. v.) Derived by some from Sax. *creaft*, skill, from the skill laid out in cultivating it. *Termes de la ley. Cowell.* But by *Spelman*, through the Lat. *crypta*, from Gr. *κρυπτω*, to conceal, as being a secret or separate place. See *Close*.

**CROISES, Croyses.** L. Fr. [L. Lat. *cruce signati*.] Pilgrims; so called as wearing the sign of the cross on their upper garments. *Britt.* c. 122. The knights of the order of St. John of Jerusalem, created for the defence of the pilgrims. *Cowell. Blount.* See *Cruce signati*.

**CROPPA.** L. Lat. A crop. *Cowell.*

**CROSS ACTION.** In practice. An action brought by a party sued against the party who has sued him, upon the same subject matter, as upon the same contract.\* This is necessary whenever the subject matter of the action cannot be used as a defence to the first action. 10 *Ad. & Ell.* 643. 2 *Smith's Leading Cases*, 1, notes, 14. See *Circuity of Action*.

**CROSS BILL.** In equity pleading. A bill filed by a defendant in a suit in equity,

against the plaintiff or complainant, in order to obtain some relief against him. 3 *Bl. Com.* 448. A defendant cannot pray any thing in his answer but to be dismissed the court; if he has any relief to pray against the plaintiff he must do it by an original bill of his own, which is called a *cross bill*. *Id. ibid.* A cross bill is a bill brought by a defendant against a plaintiff or other parties in a former bill depending, touching the matter in question in that bill. *Mitford's Eq. Pl.* 80, 81, (98, and note, Moulton's ed. 1849.) It is treated as a mere auxiliary suit, or as a dependency upon the original suit. *Story's Eq. Pl.* § 399. It is generally considered and used as a matter of defence; the original and the cross bill constituting but one cause. 7 *Johns. Ch. R.* 252. A cross bill answers to the *re-conventio* of the civil law. *Gilb. Forum Rom.* ch. 4.

**CROSS EXAMINATION.** In practice. The examination of a witness by the party opposed to the party who has first examined him, in order to test the truth of such first or direct examination, which is also called examination in chief.\* Cross examination is usually by the party who did not call the witness; but the courts frequently permit an adverse witness to be cross examined by the party who calls him. 1 *Starkie on Evidence*, 187, 188.

**CROSS REMAINDER.** A species of remainder created out of a tenancy in common. When lands are given to two or more, as tenants in common, it frequently happens that a particular estate is limited to each of the grantees in his share, with remainder over to the other or others of them,—as if a man give lands to his two children as tenants in common in tail, and direct that upon failure of the issue of one of them, his share shall go over to the other in tail, and *vice versa*. Such ulterior estates as these are called *cross remainders*, because each of the grantees has reciprocally a remainder in the share of the other; and it is a rule respecting them that in a *deed* they can be given only by express limitation, and shall never be implied; though it is otherwise with respect to *wills*, which are expounded more liberally, with a view to the presumable intent of the donor; for in these cross remainders may be raised not only by actual limitation, but by any expression from which the design to create them can reasonably be inferred. 1 *Steph. Com.* 326, 327. So where a devise is of black-acre to A., and of white-acre to B., in tail, and if they both die without issue,

then to C. in fee; here A. and B. have *cross remainders* by implication, and on the failure of either's issue, the other or his issue shall take the whole. 2 *Bl. Com.* 381. See 2 *Crabb's Real Prop.* 972, § 2339, et seq. 1 *Preston on Est.* 94, 115. 2 *Powell on Devises*, 604, ch. xxxi. 4 *Kent's Com.* 210. 1 *Hilliard's Real Prop.* 650.

**CROWN.** [Lat. *corona*, Fr. *corone*.] The sovereign power is a monarchy.

**CROWN LAW.** Criminal law in England is sometimes so termed, the crown being always the prosecutor in criminal proceedings. 4 *Bl. Com.* 2. See *Pleas of the Crown*.

**CROWN OFFICE.** A department belonging to the court of Queen's Bench, commonly called the *crown side* of the court, in which it takes cognizance of all criminal causes, from high treason down to the most trivial misdemeanour or breach of the peace. 4 *Bl. Com.* 265. 4 *Steph. Com.* 326. In this office informations are filed by the attorney general, and master of the crown office. *Id.* 379. 4 *Bl. Com.* 308. *Cole on Crim. Inform.* ch. i. ii. and *Addenda*.

**CROWN SIDE.** The criminal department of the court of Queen's Bench; the civil department or branch being called the *plea side*. 4 *Bl. Com.* 265. 3 *Id.* 42. See *Crown office*.

**CRUCE SIGNATI.** L. Lat. [Fr. *croises*, *croysaes*.] In old English law. Signed or marked with the cross. Pilgrims to the holy land [or crusaders;] so called because they wore the sign of the cross upon their garments. *Spelman*, voc. *Cruciferi*. *Bract.* fol. 20. *Id.* fol. 338 b, 444.

**CRUCIS JUDICIUM.** Lat. In old European law. The trial or judgment of the cross. One of the modes of trial by which crimes were formerly attempted to be discovered or purged. *Spelman*.

**CRY DE PAIS.** L. Fr. In old English law. A cry of the country. The hue and cry after offenders, as raised by the country, [i. e. the inhabitants], in the absence of the constable to whom that duty properly belonged. 2 *Hale's P. C.* 100. See *Hue & cry*.

**CUCKING STOOL.** In old English law. An ancient engine for the punishment of scolds, delinquent brewers and bakers,



called also *tumbrel*, *trebucket*, and *castigatory*, (qq. v.) It seems to have been anciently written *goging stole*, and corrupted into *ducking stool* from the immersion in water which was a part of the punishment. 4 *Bl. Com.* 169. *Blount*.

CUI. Lat. To whom. See *Per et Cui*.

CUI ANTE DIVORTIUM. L. Lat. (Whom before divorce.) In old English practice. A writ of entry which lay for a woman divorced from her husband, to recover her lands, &c., from him to whom her husband had alienated them during the marriage. It was so called from the words of the writ,—*cui ipsa ante divortium inter eos celebratum, contradicere non potuit*, &c., (whom she, before the divorce between them, could not gainsay.) *Reg. Orig.* 233. *F. N. B.* 204, *F.* 3 *Bl. Com.* 183, note. *Termes de la ley*. *Crabb's Hist. Eng. Law*, 287. See 3 *Reeves' Hist.* 38. *Roscoe's Real Act.* 97.

CUI IN VITA. L. Lat. (Whom in the life.) In old English practice. A writ of entry which lay for a woman against him to whom her husband alienated her lands or tenements in his lifetime. So called from the words of the writ,—*cui ipsa in vita sua contradicere non potuit*, &c.; (whom she, in his lifetime, could not gainsay, &c.) *Reg. Orig.* 232 b. *F. N. B.* 193. *Bract.* fol. 202, 321 b. 3 *Bl. Com.* 183, note. *Stat. Westm.* 2, c. 3. *Litt.* sect. 594. 3 *Reeves' Hist.* 36. *Roscoe's Real Act.* 96.

*Cui jurisdictionis data est, ea quoque commissa esse videntur, sine quibus jurisdictionis explicari non potest.* To whomsoever a jurisdiction is given, those things also are supposed to be granted, without which the jurisdiction cannot be exercised. *Dig.* 2. 1. 2. 1 *Wooddes. Lect.* Introd. lxxi. The grant of jurisdiction implies the grant of all powers necessary to its exercise. 1 *Kent's Com.* 339.

*Cui licet quod majus, non debet quod minus est non licere.* He who has authority to do the more important act, ought not to be debarred from doing what is of less importance. 4 *Co.* 23. One who has power to grant in fee simple may grant for life or for years; for an estate in fee simple includes all. *Id. ibid.* A man having a power to do a thing, may do less than such power enables him to do. *Broom's Maxims*, 76. A doctrine frequently applied in the law of principal and agent.

*Cuiusque aliquis quid concedit, conce-*

*dere videtur et id sine quo res ipse esse non potuit.* See *Concedere*.

*Omilibet in arte sua perito est credendum.* Any person skilled in his peculiar art or profession, is to be believed, [i. e. when he speaks of matters connected with such art.] *Co. Litt.* 125 a. *Shelford, Marr. & Div.* 206. Applied to witnesses who are persons of *skill*, (*periti*, or *experts*, as they are frequently called) in any particular science, trade or occupation, implying that their statements on such subjects are to be *believed*, or received as evidence. *Broom's Maxims*, 421. The authority of mercantile usage, which is proved by merchants, rests on this maxim. 1 *Bl. Com.* 75.

The following translations have been given of this maxim: "Every man is to be considered skilful in his own profession." *Branch's Princ.* "Every one is considered skilful in his own art." *Wharton's Lex.* Both these are not only grammatically incorrect, (the peculiar sense of *credendum* being also overlooked,) but convey a very different meaning from that intended by the original, which it will be seen embraces two ideas; *skill* in a party offered as a witness, and *belief* or credit founded thereon. So far from *presuming* skill in such cases, the law generally requires that fact to be established by preliminary examination. See *Broom's Max.* 424, and the case there cited. When the witness is shown to be *peritus*, and not before, the emphatic word *credendum* applies in its full force, and his statements are entitled to *be believed*, or received as evidence.

The important word *perito* is sometimes entirely omitted in citing this maxim.

*Cujus est commodum ejus debet esse incommodum.* See *Commodum*.

*Cujus est dare ejus est disponere.* Whose it is to give, his it is to dispose, [i. e. to regulate.] 2 *Co.* 71 b. The bestower of a gift has a right to regulate its disposal. Thus, the bargainer of an estate may annex such conditions as he pleases to the estate bargained, provided they are not illegal, repugnant or impossible. *Broom's Max.* 304. So, the founder of an eleemosynary corporation has, on this principle, the right of visitation, that is, the right of inspecting the management of the institution. 2 *Kent's Com.* 302.

*Cujus est divisio, alterius est electio.* Whichever [of two parties] has the division [of an estate,] the choice [of the shares] is the other's. *Co. Litt.* 166 b. In partition between coparceners, where the division is

made by the eldest, the rule in English law is, that she shall choose her share last. *Id. ibid.* 2 *Bl. Com.* 189. 1 *Steph. Com.* 323. The reason of the rule Lord Coke declares to be "for avoiding of partiality, which might apparently follow if the eldest might both divide and choose."

The form of this maxim, (which in its terms obviously contemplates but two parties,—one dividing and the other choosing,) seems hardly to convey the full meaning usually given it, which would be more exactly expressed by reading *cujus est divisio, ejus est ultima electio*. This may have led to the use of the word *ulterius* for *alterius*, in some of the editions of Blackstone.

*Cujus est solum ejus est usque ad cælum.* Whose is the soil, his it is up to the sky. *Co. Litt.* 4 a. He who owns the soil, or surface of the ground, owns, or has an exclusive right to every thing which is upon or above it to an indefinite height. 9 *Co.* 54. *Shep. Touch.* 90. 2 *Bl. Com.* 18. 3 *Id.* 217. *Broom's Max.* 172.

*Cujus est solum ejus est usque ad cælum et ad inferos.* He who owns the soil owns it to the sky and to the centre of the earth; owns every thing above and below it to an indefinite extent. Land, in its legal signification has an indefinite extent upwards as well as downwards; upwards, therefore, no man may erect any building or the like, to overhang another's land; and downwards whatever is in a direct line between the surface of any land and the centre of the earth, belongs to the owner of the surface. So that the word "land" includes not only the face of the earth, but any thing under it or over it. 2 *Bl. Com.* 18. See *Land*.

*Cujus juris (i. e. jurisdictionis) est principale, ejusdem juris erit accessorium.* He who has jurisdiction of the principal, has also jurisdiction of the accessory. 2 *Inst.* 493.

*Cujusque rei potissima pars est principium.* The chiefest part of every thing is the beginning. *Dig.* 1. 2. 1. 10 *Co.* 49 a. See *Causa et origo est materia negotii*. The word *principium* is translated in Branch and Wharton, *principle*.

**CUL.** An abbreviation of *culpabilis*, guilty. *Nient cul.*; not guilty. 4 *Bl. Com.* 339, 340.

**CULPA.** Lat. In the civil and common law. Neglect; negligence; carelessness; fault;—the opposite of *diligentia*, (q. v.) A term frequently used in the law

of bailments, expressing a mean between accident (*casus*) on the one side, and fraud (*dolus*) on the other. *Jones on Bailm.* 8. *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 14, § 784. Three degrees of *culpa* are recognised by the civilians, as well as in the common law of bailments; *lata culpa*, *levis culpa* and *levissima culpa*. *Id. ibid.* § 787. *Jones on Bailm.* 21, 22. *Story on Bailm.* § 18.

*Lata culpa*; gross fault or neglect; the omission of that care which even inattentive or thoughtless men never fail to take of their own property. *Jones on Bailm.* 21, 22. Duncan, J., 14 *Serg. & Rawle*, 275. Otherwise expressed by Sir William Jones as the want of that care which every man of common sense, however inattentive, takes of his own property. *Jones on Bailm.* 8, 118. 2 *Kent's Com.* 560. See *Story on Bailm.* § 16. *Qui ne ea quidem diligentia quâ omnes, etiam dissoluti homines uti solent, utuntur*, *latam [culpam] committere dicuntur*; they who not observe even that care which all men, even the careless, are in the habit of observing, are said to commit [or be guilty of] gross fault, or neglect. *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 14, § 787.

*Levis culpa*; ordinary fault or neglect; the want of that diligence which the generality of mankind use in their own concerns, that is, of ordinary care. *Jones on Bailm.* 22. The omission of that care which every man of common prudence, and capable of governing a family, takes of his own concerns. *Id.* 118. *Qui omittunt diligentiam a frugibus patrefamilias adhiberi solitam, levem [culpam] committere dicuntur*; they who omit that care which is usually taken by a careful head of a family, are said to be guilty of ordinary fault or neglect. *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 14, § 787.

*Levissima culpa*; slight fault or neglect; the omission of that care which very attentive and vigilant persons take of their own goods, or, in other words, of very exact diligence. *Jones on Bailm.* 22. The omission of that diligence which very circumspect and thoughtful persons use in securing their own goods and chattels. *Id.* 118. *Qui eam non adhibent diligentiam quam solent patrefamilias ad rem attentissimi, culpam levissimam [committere dicuntur]*. *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 14, § 787.

*Lata culpa plene dolo comparabitur.* Gross neglect may clearly be put on a level with fraud, [is clearly equivalent to fraud.] *Dig.* 11. 6. 1. Otherwise expressed, *Lata culpa dolo equiparatur*.

*Magna negligentia culpa est, magna culpa dolus est.* Gross negligence is fault; gross fault is fraud. *Dig.* 50. 16. 226.

The doctrine embodied in these maxims, in the literal sense given to them, is adopted by Sir William Jones in his Essay on the Law of Bailments, and seems to have been formerly recognised to nearly the same extent in the common law. The modern doctrine, however, is that gross negligence, though it may be evidence of fraud, is not the same thing; or, in other words, it may in certain cases amount to fraud, but it is not fraud by inference of law, but matter of fact for a jury. Parker, C. J., 17 *Mass. R.* 500. Lord Tindal, C. J., 2 *Man. & Gr.* 852. Lord Denman, C. J., 4 *Ad. & Ell.* 876. *Story on Bailm.* § 19. 2 *Kent's Com.* 560, and note.

The true interpretation of the civil law maxims depends obviously on the construction to be given to the emphatic terms *culpa* and *dolus*, both of which have been made the subjects of much discussion by civilians and jurists. The exact meaning of *culpa*, indeed, does not seem to have been entirely settled in the Roman law. It is usually translated *negligence*, and is expressly used by Justinian as a synonyme of that word, (*negligentia*), and also of *desidia*, (remissness.) *Inst.* 3, 26. 9. But the language of the rule in the Digests already quoted,—*Magna negligentia culpa est, magna culpa dolus est*,—obviously makes it to be something more than mere negligence, being a high degree of negligence, just as fraud was a high degree of *culpa*; and the same idea is very significantly conveyed by that common expression in modern law,—*culpable negligence*,—which clearly implies that all negligence is not culpable. It will be seen, moreover, that the maxim last quoted fixes *culpa* as a mean between *negligentia* on the one side, and *dolus* on the other. Sir William Jones attributes this want of uniformity or precision, in the use of the word *culpa*, to the intrinsic poverty of the Latin language, as compared with the Greek, and the want of proper words to express the various shades of fault. *Jones on Bailm.* 33. Heineccius defines *culpa* from the Digests to be *factum inconsultum quo alter injuria læditur, vel quod quædam a diligente provideri potuerit, non sit provisum*; an act done without purpose, (or settled design,) by which another is injured; or an injurious act which no care was taken to foresee and prevent, when it might have been foreseen and prevented by a careful person. *Heinecc. El. Jur. Civ.* lib. 3, tit. 14, § 784. And see *Ayliffe Pand.* b. 2, tit. 13, cited in *Story on Bailm.* § 20 b, note. As to the meaning of the important word *dolus*, see *Dolus*.

**CULPA.** Lat. In the common law. Fault; blame; misconduct; culpable conduct; conduct for which a party may be punished, or held to answer in damages or a penalty.

*Culpa est immiscere se rei ad se non pertinenti.* It is culpable conduct for a man to meddle with a thing not belonging to, or concerning him. 2 *Inst.* 208.

*Culpa tenet [tenent] suos auctores.* Misconduct binds [should bind] its own authors. It is a never-failing axiom that every one is accountable only for his own delicts. *Ersk. Inst.* b. 4, tit. 1, § 14. *Id.* b. 4, tit. 4, § 103.

*Culpa parva par esto.* Let the punishment be proportioned to the offence. *Branch's Princ.*

**CULPRIT.** A word made up of two distinct words or abbreviations of words, (*cul.* abbrev. of *culpabilis*, guilty, and *pri* or *prest*, ready, i. e. to prove it,) used anciently on the arraignment of a prisoner at the bar, and employed in the course of time to denote a prisoner so arraigned. It has not now any technical meaning, but is popularly used to denote any criminal, especially one found or confessed to be guilty.

Anciently, when a prisoner had pleaded "not guilty," (L. Lat. *non culpabilis*; L. Fr. *nient culpable*, or, as it was abbreviated on the minutes, "*non* or *nient cul.*") the clerk of the assize, or clerk of the arraigns, on behalf of the crown, replied that the prisoner *was* guilty, (*cul.*) and that he *was ready*, (*pri*) to prove him so. 4 *Bl. Com.* 339. In the course of time, it became the practice for the officer of the court to read aloud these words, without regard to their real meaning, (which was beginning to be forgotten, owing to the disuse of Law French,) and to apply them as an appellation of the prisoner himself; for when a prisoner pleaded not guilty, the officer used to say, "*cul. pri*,—how wilt thou be tried?" to which the prisoner usually replied "by God and the country," meaning *by a jury*. 4 *Steph. Com.* 408, note. Mr. Christian gives a different explanation, and supposes *pri* to have been a corruption of *pnt*, written for *ponit*, as a minute that issue was joined, or *ponit se super patriam*, (he puts himself upon the country,) or *pnt se* might be converted into *pri* or *prest*, as it was sometimes written. 4 *Chitt. Bl. Com.* 340, note. As a confirmation of this conjecture, it is said that the clerk of the arraigns in the English courts, at this day, immediately after the arraignment, writes upon the in-

dietment, over the name of the prisoner, *pnts. Id. ibid.*

**CULTURA.** L. Lat. A parcel of arable land. *Blount.*

**CULVERTAGE.** In feudal law. Confiscation, or forfeiture of lands and goods. *Cowell.*

**CUM.** Lat. (prep.) With. See *infra.*

**CUM.** Lat. (adv.) When; whereas. *Quod cum*; that whereas. *Reg. Orig. passim.* See *infra.*

**CUM ONERE.** Lat. With the burden or charge; subject to a charge or incumbrance. 2 *Powell on Devises*, 673, 674. *Transit terra cum onere*; the land passes with the burden or incumbrance. *Co. Litt.* 231 a. *Res transit cum suo onere*; the thing passes with its burden or charge. *Bract.* fol. 47 b, 48.

**CUM PERTINENTIIS.** L. Lat. With the appurtenances. *Bract.* fol. 73 b. *Cum eorum et cuiuslibet eorum pertinentiis*; with their and every of their appurtenances. *Towns. Pl.* 20. Formal words in conveyances, when written in Latin. "The incident, accessory, appendant and regardant shall, in most cases, pass by the grant of the principal, without the words *cum pertinentiis*, but not *è converso*." *Shep. Touch.* 89. *Gibson, C. J.*, 7 *Penn. St. R.* 488, 491.

**CUM TESTAMENTO ANNEXO.** L. Lat. With the will annexed. A term applied to administration granted where a testator makes an incomplete will, without naming any executors, or where he names incapable persons, or where the executors named refuse to act. 2 *Bl. Com.* 503, 504. See *Administration cum testamento annexo.*

*Cum confidente sponte mitius est agendum.* A party making a voluntary confession is to be more mercifully dealt with. 4 *Inst.* 66. The word *confitens* in this maxim is sometimes written *confidentis*, leading to the erroneous translation: "The behavior ought to be kind to one *confiding* willingly." *Branch's Princ.*

*Cum due inter se pugnantia reperiuntur in testamento, ultimum ratum est.* Where two things repugnant to each other are found in a will, the last shall stand. *Co. Litt.* 112 b. *Shep. Touch.* 451. It is an established rule in the construction of wills, that where two clauses or dispositions are

totally irreconcilable, so that they cannot possibly stand together, the clause or disposition which is posterior in local position shall prevail; it being considered that the subsequent words indicate a subsequent intention. 1 *Powell on Devises*, 358—360, note. 2 *Atk.* 372.

*Cum par delictum est duorum, semper oneratur petitor, et melior habetur possessoris causa.* Where the fault of two parties is equal, the claimant always has the burden, and the party in possession is deemed to have the better case. *Dig.* 50. 17. 154. See *In pari delicto petitor est conditio possidentis.*

*Cum quod age non valet ut age, valet quantum valere potest.* When that which I do is of no effect as I do it, it shall have as much effect as it can; [i. e. in some other way.] 4 *Kent's Com.* 493. Thus, if the form of a conveyance be an inadequate mode of giving effect to the intention of the party executing it, according to the letter of the instrument, it is to be construed under the assumption of another character, so as to give it effect. *Id. ibid.* In other words, when a deed cannot take effect according to the letter, it will be construed so as it may take some effect or other. *Shep. Touch.* (by Preston,) 87. *Id.* 84. Hence the doctrine of *cy pres*, (q. v.)

**CUMBR'.** An abbreviation of *Cumbria*, *Cumberland*, in old English pleadings and records. *Towns. Pl.* 147. *Cowell*, Appendix.

**CUNA.** L. Lat. Coin. *Co. Litt.* 207. *Cunagium*; coinage. *Towns. Pl.* 62, 260.

**CUNEARE.** L. Lat. To coin. *Spelman*, voc. *Cuneus*. *Cuneatus*; coined. *Towns. Pl.* 180. *Cuneator*; a coiner. *Id.* 260.

**CUNEUS.** L. Lat. The iron die with which metallic money is coined. *Spelman*. The money itself, so coined; coin. *Id. Towns. Pl.* 260.

The place of coinage; a mint. *Spelman. Cowell. Blount.*

**CUR.** A common abbreviation of *CURIA*.

**CUR. ADV. VULT.** An abbreviation of *curia advisari vult*, frequent in the reports. See *Curia advisari vult*.

**CURA.** Lat. Care, charge, oversight, guardianship.

In the civil law. A species of guardianship which commenced at the age of puberty, (when the guardianship called *tutela* expired,) and continued to the completion of the twenty-fifth year. *Inst.* 1. 23. pr. *Id.* 1. 25. pr. *Hallifax Anal.* b. 1, c. 9. Called also *curatio*, (q. v.)

CURA ANIMARUM. L. Lat. In ecclesiastical law. Care of souls, or *cure* of souls, (q. v.) as it is frequently rendered.

CURATE. [from *cura*, q. v.] In ecclesiastical law. Properly, an incumbent who has the *cure* of souls, but now generally restricted to signify the spiritual assistant of a rector or vicar in his *cure*. *Brande.*—An officiating temporary minister in the English church, who represents the proper incumbent; being regularly employed either to serve in his absence or as his assistant, as the case may be. 1 *Bl. Com.* 393. 3 *Steph. Com.* 88. It is the lowest degree in the church. *Id.*

CURATIO. Lat. [from *curare*, to take care.] In the civil law. Guardianship. The power of taking charge of, and managing the property and affairs of those who are unable or incompetent to do it themselves. *Heinecc. El. Jur. Civ.* lib. 1, tit. 23, § 266. *Bract.* fol. 28 b. See *Cura*.

CURATOR. Lat. [from *curare*, to take care, which from *cura*, q. v.] One who is appointed to take care of any thing for another; one who is appointed to administer the estate of any person who is not legally competent to manage it himself; a guardian. *Heinecc. El. Jur. Civ.* lib. 1, tit. 23. In a general sense, the office of a *curator* is not distinguishable from that of a *procurator*. *Id.* §§ 265, 266.

In the civil law. A species of guardian appointed for minors from puberty to the age of twenty-five. *Inst.* 1. 23. pr. Lunatics, spendthrifts, idiots, deaf and dumb and incurably sick persons, were also put under the charge of a *curator*. *Id.* § 3, 4. See *Tutor*. Bracton uses this term indifferently with *custos*. *Bract.* fol. 28 a, b.

A person appointed to take care of the estate of an absentee. *Civ. Code of Louisiana*, Art. 50.

CURATOR AD HOC. Lat. In the civil law. A guardian for this [purpose]; a special guardian. *Civ. Code of Lou.* Art. 57, 372.

CURATOR IN (or AD) LITEM. Lat. In the civil law. A guardian for the pur-

pose of a suit; or one appointed to prosecute or defend a suit for another. *Inst.* 1. 23. 2. Hence the modern phrase *guardian ad litem*, (q. v.)

CURATRIX. Lat. A female guardian. *Bract.* fol. 28 b.

CURE OF SOULS. [Lat. *cura animarum*.] In English ecclesiastical law. The spiritual charge of a parish, including the ordinary and regular duties of an officiating clergyman.

CURFEW, *Curfeu*. [L. Fr. *couvre feu*; from *couvrir*, to cover, and *feu*, fire; L. Lat. *ignitegium*.] In old English law. A bell which rang at eight o'clock in the evening in the time of William the Conqueror, by which every person was commanded to rake up, or *cover* his *fire*, and put out his light. *Termes de la ley*. *Cowell*. *Spelman*. 4 *Bl. Com.* 420. *Tomlins*. This was abolished by Henry I., but the term was long applied in England to the ringing of any bell customarily towards bed-time. *Stow's Annals*. *Cowell*. See *Ignitegium*.

CURGE. L. Fr. *Runs*. *Litt.* sect. 120.

CURIA. L. Lat. A court; the palace of a sovereign, (*regia seu palatium principis*.) *Spelman*.

A sovereign's household, (*familia*) or court. *Id.*

A judicial tribunal, (*forum juridicum*) or court, held in the sovereign's palace. *Id.*

Any judicial tribunal; a court of justice. *Id.*

The civil or secular power, as distinguished from the church. *Id.*

The residence of a noble; a manor, or chief manse; the hall of a manor. *Id.*

A lord's court, as being held in his manor. *Cowell*. See *Curia baronis*.

The persons, or feudatory and other tenants who did suit and service at the lord's court. *Cowell*.

A piece of ground, or area attached to a house, or within which a house is built; a yard, court or court-yard, (*atrium seu area cujusvis habitaculi*.) *Spelman*. *LL. Edw. Conf.* c. 6. *Bract.* fol. 76, 222 b, 335 b, 356 b, 358. See *Curia claudenda*.

A parsonage house or manse. *Cowell*. *Kennett's Par. Ant.* 205.

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*Curia* is derived by *Spelman* from the Gr. *κῠρῖα*, which, among other significations, had those of a meeting, or place of meeting (*concio et concionis locus*.) for public business, whether of a judicial character

or otherwise; the sovereign power, &c. According to the same writer, it was not used in the sense of a judicial tribunal among the Germans, Franks, Anglo-Saxons and other northern nations of Europe, before the tenth century; the received words being *mallum*, *placitum*, *gemotum*, &c. Afterwards, however, it came into general use, and constantly occurs in the old books, and in reports down to the present day, in the sense of *court*. Bracton frequently uses *curia* and *judicium* to signify the same thing. *Dies in curia*. *Bract.* fol. 342 b. *Dies in iudicio*. *Id.* fol. 362 b. *Cum in iudicio comparuerint*. *Id.* fol. 296 b. *Antequam in curia comparuerit*. *Id.* fol. 365. Strictly, however, *curia* signifies the place where the court is held; *judicium*, the proceedings there. See *Judicium*.

**CURIA.** Lat. In the Roman law. A division of the Roman people, said to have been made by Romulus. They were divided into three tribes, and each tribe into ten *curiæ*, making thirty *curiæ* in all. *Dionys. Hal.* ii. 23. *Spelman*.

The place or building in which each *curia* assembled to offer sacred rites. *Varro de Ling. Lat.* iv. 32. *Spelman*.

The place of meeting of the Roman senate; the senate house. *Id.*

**CURIA ADVISARI VULT.** L. Lat. The court will advise, i. e. take time to deliberate. A phrase used in the reports (and commonly abbreviated to *cur. adv. vult.*) to denote the suspension of judgment by the court, after hearing argument, for the purpose of further deliberation; as where the point to be determined was one of novelty or difficulty. It was equivalent to an adjournment of the cause, and the terms *adjournatur*, *et adjournatur*, *sed adjournatur*, are employed in the older reports to signify the same thing. See *Adjournatur*.

The name of an entry made in the record of a cause by way of continuance, where judgment was not given at the same term in which the cause was argued. See *Continuance*.

**CURIA CLAUDENDA.** See *De curia claudenda*.

**CURIA COMITATUS.** L. Lat. In old English law. The court of the county; the county court, or court of the shire, (*Sax. scyregemot*;) in the Saxon times. See *County court*, *Comitatus*.

**CURIA DOMINI.** L. Lat. In old English law. The lord's court, house or

hall, where all the tenants met at the time of keeping court. *Cowell*.

**CURIA MAGNA.** L. Lat. In old English law. The great court; one of the ancient names of parliament. *Bract.* fol. 1 b. 9 *Co.* pref. 1 *Bl. Com.* 148.

The king's court, or *aula regis*. *Crabb's Hist. Eng. Law*, 144.

**CURIA PEDIS PULVERIZATI.** L. Lat. In old English law. The court of *piedpoudre* or *piepouders*, (q. v.) 3 *Bl. Com.* 32.

**CURIA REGIS.** L. Lat. In old English law. The king's court; the supreme court of the kingdom, established by the Norman princes. *Crabb's Hist. Eng. Law*, 57. Otherwise called *curia magna*, and *aula regis*. *Id.* 144. The *aula regis*, the *bancus*, (afterwards the common bench,) and the *iter* or *eyre*, are all called by Bracton *curiæ regis*, the king's courts; though the first of these was so in a peculiar sense, being held before the sovereign in person, (*coram ipso rege*.) *Bract.* fol. 105 b, 361 b, 362.

An ancient name of parliament. *Stat. Mert. pr.* *Bract.* fol. 227 b.

**CURIALITAS.** L. Lat. In old Scotch law. Curtesy; the estate of tenancy by the curtesy. *Skene de Verb. Signif. Crag. de Jur. Feud.* lib. 2, c. 19, § 4. 2 *Bl. Com.* 126. 2 *Wooddes. Lect.* 14. See *Curtesy*.

**Curios et captiosus interpretatio in lege reprobatur.** A curious [overnice or subtle] and captious interpretation is reprobated in law. 1 *Bulstr.* 6.

**CURRERE.** Lat. In old English law. To run; to elapse, as time, with the effect of limitation. *Nullum tempus currit donationi regis vel contra eum in hoc casu*; no time runs against the king's gift, or against him in this case. *Bract.* fol. 56. *Id.* fol. 103. *Currit tempus contra desidios et sui juris contemptores*. Time runs against the slothful and those who neglect their rights. *Id.* fol. 100 b, 101.

To have course or effect. *Currat lex communis sicut prius currere consuevit*; the common law shall have course, as it hath heretofore usually had. *Stat. Marlbr.* c. 7, 9.

**CURRIT QUATUOR PEDIBUS.** L. Lat. It runs upon four feet; or, as sometimes expressed, it runs upon all fours. A

phrase used in arguments to signify the entire and exact application of a case quoted.

**CURRUS.** Lat. A chariot or carriage. *Bract.* fol. 168. Distinguished from *carecta*, and *carrum*.

**CURSITOR.** L. Lat. and Eng. [*clericus de cursu*.] In English practice. An officer or clerk belonging to the court of chancery; whose business is to make out all original writs. These officers are of very ancient institution, and were formerly termed *clerici de secunda forma*, (clerks of the second grade,) and in the statute 18 Edw. III. st. 5, are called clerks of course. *Crabb's Hist. Eng. Law*, 547. The name is derived from the writs *de cursu*, that is, those original writs which issued in ordinary cases, and of course,) which it was their office to make out. *Hob.* 118. See *De cursu*, *Original writ*.

**CURSO.** L. Lat. A ridge. *Cursones terræ*; ridges of land. *Cowell*.

**CURSUS.** Lat. [from *currere*, to run.] In old English law. A course or running, as of water, (*cursus aquæ*.) *Cursus carbonum*; a seam of coals. *Towns. Pl.* 43.

A course or practice. *Cursus curiæ*; the practice of a court.

*Cursus curiæ est lex curiæ.* The practice of a court is the law of the court; [i. e. it is to be uniformly followed.] 3 *Bulstr.* 53. *Broom's Max.* 57.

**CURTESY, or CURTESY OF ENGLAND.** [L. Lat. *curialitas*, *curialitas Anglicana*; *lex Angliæ*; *curtesia*: L. Fr. *curtesie Dengleterre*.] An estate to which a man is by law entitled, on the death of his wife, in the lands or tenements of which she was seised during the marriage in fee simple or fee tail, provided he had issue by her, born alive during the marriage, and capable of inheriting her estate. 1 *Steph. Com.* 246. In this case he shall, on the death of his wife, hold the lands for his life, as *tenant by the curtesy of England*. *Id. ibid.* 2 *Bl. Com.* 126. *Bract.* fol. 438. *Litt.* sect. 35. *Co. Litt.* 29 b. It is a species of freehold estate, not of inheritance, and equally known to English, Scotch and American law. 4 *Kent's Com.* 27, 28. *Ersk. Inst.* b. 2, tit. 9, § 52. 1 *Hilliard's Real Prop.* 110, et seq. *U. S. Digest and Supplement*, Dower and Curtesy.

The early writers on English law agree in considering this kind of estate as peculiar to the law of *England*, and hence it is fre-

quently called by them, and in old statutes and records, a tenancy *per legem Angliæ*, *par la ley Dengleterre*, (by the law of England,) or, as expressed by Britton, *title de fraunktenement en le heritage sa femme, par reason d' la ley Dengleterre*. *Glanv.* lib. 7, c. 18. *Bract.* fol. 437 b, 438. *Britt.* c. 51, fol. 132. *Id.* c. 66, fol. 167 b. *Fleta*, lib. 6, c. 56. *Litt.* sect. 35. *Stat. Westm.* 2, c. 3. 1 *Steph. Com.* 246, note (o). It has been shown by modern writers that this peculiarity did not, in fact, exist; a similar kind of estate being found to have prevailed in Normandy, as well as among the ancient Germans, and even in the Roman law. *Grand Coustum.* c. 119. *Lin-denbrog. LL. Alam.* tit. 92. *Cod.* 6. 60. 1. 2 *Bl. Com.* 126. *Crag. de Jur. Feud.* lib. 2, c. 19, sect. 4. *Wright on Tenures*, 193, 194. *Bisset on Estates*, 36. 4 *Kent's Com.* 28. Its actual derivation from these sources, however, not having been made out, the correctness of the ancient opinion as to its local origin in England, seems to be not materially affected. 2 *Wooddes. Lect.* 13.

As to the meaning of the term *curtesy* itself, it is by some writers understood in its ordinary sense of *favor* (*gratia*), the estate being enjoyed rather by favor of law, (*ex gratia legis*;) than as a matter of right. *Spelman*, voc. *Jus curialitatis*. 2 *Wooddes. Lect.* 13. Sir J. Jekyll, 2 *P. Wms.* 703. Others trace it to *curtis* or *curia*, (a court,) as denoting an attendance by the husband on the lord's court, in capacity of his vassal or tenant, in respect of the wife's land. 2 *Bl. Com.* 126. *Bisset on Estates*, 37. Others, adopting the same etymology, give it a different application, considering *tenant by curtesy* as signifying as much as *tenant by the courts of England*. *Crabb's Hist. Eng. Law*, 86. 2 *Chitt. Bl. Com.* 126, note. But this last seems a strained derivation.

**CURTILAGE.** L. Fr. and Eng. [L. Lat. *curtilagium*; from *curtis*, a dwelling, or *curtillum*, the enclosed area around it, and *agere*, to do; as being the place where the business of the house is done: or from *curtis*, or *curtillum*, solely: or from Fr. *cour*, court, and Sax. *leagh*, place.] A yard, court-yard, or piece of ground lying near to a dwelling-house, and included within the same fence. This ancient sense of the word is still retained. *Spelman*, voc. *Curtilagium*. *Lib. Rames.* § 271, cited *ibid.* *Shep. Touch.* 94. 1 *Crabb's Real Prop.* 76. In its most comprehensive and proper legal signification, it includes all that space of ground and buildings

thereon, which is usually enclosed within the *general fence* immediately surrounding a principal messuage and outbuildings, and yard closely adjoining to a dwelling-house; but it may be large enough for cattle to be levant and couchant therein. 1 *Chitt. Gen. Pract.* 175.

A garden, (*hortus olitorius*.) *Lindewode Prov. tit. De decimis, c. Sancta, § Omnibus. Spelman. Thel. Dig. lib. 8, c. 1, ¶ 6. Shep. Touch.* 94. But this is not the modern meaning. 1 *Chitt. Gen. Pr. ub. sup.*

**CURTILAGIUM.** L. Lat. A curtilage. *Spelman.* See *Curtilage*.

**CURTILES TERRÆ.** L. Lat. Court lands. *Cowell.* See *Court lands*.

**CURTILLUM.** L. Lat. [from *curtis*, q. v.] In old English law. An area or space lying within the enclosure of a dwelling-house, (*infra curtis, seu habitaculi seipimentum*.) *Spelman. LL. Inæ, c. 40, cited ibid.* *Spelman* prefers the derivation from the Fr. *courtil*, a space behind a house, as a green-house or garden, (*area sub aversa ædium parte; viridarium, hortus*;) answering to the Sax. *weorth*.

**CURTINER.** L. Fr. To improve, cultivate, fence in. *Britt. c. 55.*

**CURTIS, Curta, Curtus.** L. Lat. [from Gr. *κῦρτις, κῦρτός*, Lat. *cors, cohors*, a cage, enclosure, or enclosed space.] In old European law. A space or area about a house. *Spelman. Leo Marsic. Cassin. lib. 1, c. 36, cited ibid.*

A garden. *Id.* See *Curtilage*.

An enclosure or pound for securing animals. *LL. Burgund. tit. 23, § 1.*

A house or dwelling; a country house, (*casa, vel habitaculum rusticum*;) a court. *Spelman. Si mulier foras curte sua exierit*; if a woman shall go out of her house. *LL. Burgund. Add. 1, tit. 5, § 2. Si quis ad battalia curte sua exierit*; if any one go out of his court to battle. 3 *Bl. Com.* 320, note (m). *Canem custodem domus sive curtis. L. Salic. tit. 6, § 3.*

A dwelling-house, with land adjoining, or belonging to it; a manse or manor. *Spelman. Lindewode Prov. Angl. lib. 3, tit. De decim., c. Sancta, § Omnibus.*

The palace, household or court of a sovereign. *Spelman. Jornandes de Reb. Geticis, c. 34, cited ibid.*

The seat or residence of a nobleman. *Spelman.*

A village or town, as distinguished by the residence of a noble. *Spelman.*

A judicial tribunal; a court of justice; anciently called *placitum*. See *Court*. *Curtis regia*; the royal court. *LL. Longob. lib. 1, tit. 2, l. 9.* Judicial tribunals were called *courts*, because originally held in the *courts*, (*in curtibus, id est, ædibus*;) that is, the palaces and residences of kings and nobles. *Spelman.* The vassals who sat as judges in these courts of their lord were called peers of the court, (*pares curtis, q. v.*) *Id.* *Curia*, however, was the Latin word generally used to denote a court. See *Curia*.

**CUSTA.** L. Lat. Cost or costs. *Spelman, voc. Custagium.*

**CUSTAGIUM**, [pl. **CUSTAGIA**; from Fr. *coust, coustange*.] In old English law. Cost or costs; expenses of judicial proceedings. *Spelman.* Sometimes translated *costages*.

**CUSTANTIA.** L. Lat. [Fr. *coustange*.] Costs. See *Custagium*.

**CUSTODE ADMITTENDO.** L. Lat. See *De custode admittendo*.

**CUSTODE AMOVENDO.** L. Lat. See *De custode amovendo*.

**CUSTODES**, [pl. of **CUSTOS**.] In old English law. Keepers, guardians. *Custodes pacis*; conservators of the peace. 1 *Bl. Com.* 349, 350. *Custodes placitorum coronæ*; keepers of the pleas of the crown. Supposed to be the same with *coroners*. *Crabb's Hist. Eng. Law*, 150. *Custodes libertatis Angliæ autoritate parliamenti*; keepers of the liberty of England, by the authority of parliament. The style in which writs and other judicial proceedings were made out in England during the grand rebellion, from the execution of King Charles I. till Oliver Cromwell was declared protector. *Termes de la ley. Wharton's Lex. Whishaw.*

**CUSTODIA.** Lat. [from *custos*, a keeper or guardian; L. Fr. *gard, garde*.] In old English law and practice. Keeping, custody. *In arcta et salva custodia*; in close and safe custody. 3 *Bl. Com.* 415.

Ward, or guard; the duty of keeping guard. 1 *Bl. Com.* 356.

Wardship or guardianship; (*custodia pupillorum*.) *Reg. Orig.* 161, et seq. *Spelman. Bract. fol. 87. Co. Litt.* 76 a. *Custodia comitatus*; the wardship of a county. 3 *Salk.* 322.



**CUSTODIRE.** Lat. To keep. *Tam negligenter et improvide custodivit ignem suum, quod domus combusta fuit*; so negligently and carelessly kept his fire, that the house was burnt. 5 Co. 14.

**CUSTOM.** [L. Fr. *coutume, custome*; Lat. *consuetudo*.] A law, not written, established by long usage, and the consent of our ancestors. *Termes de la ley. Cowell. Bract. fol. 2.* If it be universal, it is common law; if particular to this or that place, it is then properly *custom*. 3 Salk. 112. The requisites to make a particular custom valid are, (1) it must have been used so long that the memory of man runneth not to the contrary; (2) it must have been continued; (3) peaceable; (4) reasonable; (5) certain; and (6) compulsory, that is, not left to the option of any man whether he will use it or not. (7) Customs must also be consistent with each other. 1 Steph. Com. 56—58. 1 Bl. Com. 76—78. Co. Litt. 110 b. 3 Ad. & Ell. 554. See 2 Hil-liard's Real Prop. 153. U. S. Digest and Supplement, Custom and usage. The distinction between custom and prescription is, that the former is common to many; the latter peculiar to an individual. *Termes de la ley.* In other words, custom is local; prescription is personal. 4 Co. 32. 2 Bl. Com. 263. See *Consuetudo*.

Custom also signifies a toll or tribute, and the service of a tenant to his lord, but in these senses it usually occurs in the plural. See *Customs*.

**Customo serra prise stricto.** Custom shall be taken [is to be construed] strictly. Jenk. Cent. 83.

**CUSTOM OF MERCHANTS.** A system of customs or rules relative to bills of exchange, partnership, and other mercantile matters; and which, under the name of the *lex mercatoria*, or law merchant, has been engrafted into, and made a part of the common law. 1 Bl. Com. 75. 1 Steph. Com. 54. 2 Burr. 1226, 1228. According to Mr. Stephen, this branch of the law is distinguished by a separate name, only because it applies to the particular subjects in question, principles different from those which the common law ordinarily recognises, and because these principles were engrafted into the municipal system of England by gradual adoption from the *lex mercatoria*, or general body of European usages in matters relative to commerce. 1 Steph. Com. 54.

The custom or usage of trade is the law of that trade; and to make it obligatory, it must be ancient,—sufficiently so, at least,

to be generally known,—certain, uniform and reasonable. U. S. Digest, Custom and usage, and cases there cited.

**CUSTOMARY ESTATES.** In English law. Such estates as owe their origin to the customs of different manors, and belong to such persons as hold their lands by copy of court roll, or tenures of the like kind. 2 Crabb's Real Prop. 985, § 2354.

**CUSTOMARY FREEHOLD.** In English law. A variety of copyhold estate, the evidences of the title to which are to be found upon the court rolls; the entries declaring the holding to be according to the custom of the manor, but it is not said to be at the will of the lord. The incidents are similar to those of common or pure copyhold. 1 Steph. Com. 212, 213 and note. 2 Bl. Com. 100, 149. 1 Crabb's Real Prop. 709—712, §§ 920—923. 1 Man. Gr. & Scott, 940.

**CUSTOMARY SERVICE.** In English law. A service due by custom from one person to another; as the service of doing suit to another's mill, where the persons resident in a particular place, by usage time out of mind, have been accustomed to grind their corn at a certain mill. 3 Steph. Com. 509. 3 Bl. Com. 235.

**CUSTOMARY TENANTS.** [L. Lat. *customarii tenentes*.] In English law. Such tenants as hold by the custom of the manor, as their special evidence. *Termes de la ley.* Copyholders belong to this class. 2 Bl. Com. 147, 148. See *Copyholder*.

**CUSTOMS.** [L. Lat. *custuma, custumæ, custumiæ*; from Fr. *coustum*; *consuetudines*.] The duties, toll, tribute or tariff payable upon merchandise exported and imported, and forming a part of the public revenue. 1 Bl. Com. 313, 314, note. 2 Steph. Com. 575, et seq.

These imports seem to have been called *customs* from having been paid from time immemorial. 1 Chitt. Bl. Com. 314, note. According to Lord Coke, customs or duties were called in old legal Latin, *custumæ* and *consuetudines* indiscriminately. 2 Inst. 58. 4 Inst. 29. 30. But according to Blackstone, *consuetudines*, whenever it occurs, means usages. 1 Bl. Com. 314.

**CUSTOMS OF LONDON.** Particular customs within the city of London, with regard to trade, apprentices, widows, orphans and a variety of other matters. 1 Bl. Com. 75. 1 Steph. Com. 54, 55.

**CUSTOMS AND SERVICES.** [L. Lat. *consuetudines et servitia*.] In old English law. Services which the tenants of lands, under the feudal law, owed to their lords, and which, if withheld, the lord might resort to the writ of customs and services (*breve de consuetudinibus et servitiis*,) to compel them. *Tomlins*. See *De consuetudinibus et servitiis*.

**CUSTOS.** Lat. A keeper, or protector. See *infra*.

A guardian. *Bract.* fol. 87, 161. *Co. Litt.* 76 a.

**CUSTOS BREVIUM.** L. Lat. In English practice. Keeper of the writs. A principal clerk belonging to the courts of King's Bench and Common Pleas, whose office was to receive and keep all the writs, returned into the court, and also all records of *nisi prius*. *Termes de la ley*. *Cowell*. *Blount*. 1 *Tidd's Pr.* 43, 44. 1 *Archb. Pr.* 11. His title in the Common Pleas was *custos brevium domini regis de banco*. *Towns. Pl.* 211. This office was abolished by statute 7 Will. IV. and 1 Vict. c. 30.

**CUSTOS FERARUM.** Lat. A game keeper. *Towns. Pl.* 265.

**CUSTOS HORREI REGII.** L. Lat. Protector of the royal granary. 2 *Bl. Com.* 394.

**CUSTOS PLACITORUM CORONÆ.** L. Lat. In old English law. Keeper of the pleas of the crown. *Bract.* fol. 14 b. *Cowell* supposes this office to have been the same with the *custos rotulorum*. But it seems rather to have been another name for coroner. *Crabb's Hist. Eng. Law*, 150. *Bract.* fol. 136 b. The title itself indicates a criminal, rather than a civil jurisdiction. See *Corona*, *Placita coronæ*. In the writ *de odio et atia*, these officers are mentioned as sitting with the sheriff in the county court. *Reg. Orig.* 133 b.

**CUSTOS ROTULORUM.** L. Lat. Keeper of the rolls. An officer in England who has the custody of the rolls or records of the sessions of the peace, and also of the commission of the peace itself. He is always a justice of the quorum in the county where appointed, and is the principal civil officer in the county. 1 *Bl. Com.* 349. 4 *Id.* 272. *Lamb. Eiren.* lib. 4, c. 3, p. 373. 3 *Steph. Com.* 37. 4 *Id.* 337. *Cowell*.

**CUSTOS SPIRITUALIUM.** L. Lat. In English ecclesiastical law. Keeper of

the spiritualities. He who exercises the spiritual jurisdiction of a diocese, during the vacancy of the see. *Cowell*.

**CUSTOS TEMPORALIUM.** L. Lat. In English ecclesiastical law. Keeper of the temporalities. He to whose custody a vacant see or abbey was committed by the king, as supreme lord; who, as a steward of the goods and profits, was to give account to the escheator, and he into the exchequer. *Cowell*.

**CUSTUMA.** L. Lat. [from Fr. *coustum*, toll or tribute.] In old English law. Customs, duties or imposts. 1 *Bl. Com.* 314. *Crabb's Hist. Eng. Law*, 255. According to *Spelman*, who is supported by the Register, the proper word is *custumæ*. *Reg. Orig.* 138.

**CUSTUMA ANTIQUA SIVE MAGNA.** L. Lat. Ancient or great customs. Duties formerly payable in England under the statute of *Confirmatio Chartarum*, by every merchant, as well native as foreign, on wool, sheepskins or woollens, and leather exported. 1 *Chitt. Bl. Com.* 314, and note. 4 *Inst.* 29. *Stat. Confirmatio Chartarum*, c. 11, [7.] 3 *Salk.* 389.

**CUSTUMA PARVA ET NOVA.** L. Lat. Small and new customs. Imposts of 3d. in the pound, due formerly in England from merchant strangers only, for all commodities, as well imported as exported. This was usually called the alien's duty, and was first granted in 31 Edw. I. 1 *Bl. Com.* 314. 4 *Inst.* 29.

**CUSTUS.** L. Lat. Cost, charge, expense. *Glanv.* lib. 1, c. 32. *Ad custum tuum*; at your cost. *Reg. Orig.* 2 b. *Ad custum ejus*. *Bract.* fol. 234.

**CUTH, Couth.** Sax. Known, knowing. *Uncuth*; unknown. See *Couthutlaugh*, *Uncuth*.

**CUTPURSE.** [L. Fr. *cynsour de burse*, q. v.] In old criminal law. An offender answering to the modern pickpocket.

**CY.** L. Fr. Here. *W. et A. sa feme, que cy sont*; W. and A. his wife, who are here. *Stat. Mod. Lev. Fines.* 2 *Inst.* 510. *Cy apres*; hereafter. *Cy avant*; heretofore. *Kelham*.

**CY, Ci, Si, Sy.** L. Fr. So; as. *Cy languishant ou cy decrepyte que il ne poi*, &c.; so sick or so feeble that he cannot, &c.

*Litt.* sect. 434. *Cy bien*; as well. *Cy court*; so speedily. *Cy que*; so that. *Kelham*.

**CY PRES.** L. Fr. So near, as near. *Donques doit le feoffee, per la ley, faire estate a la feme, cy pres le condition, et auxi cy pres l'entent de le condition que il poit faire, &c.* Then ought the feoffee, by the law, to make an estate to the wife, as near the condition, and also as near the intent of the condition, as he can make it, &c. *Litt.* sect. 352.

**CY PRES, DOCTRINE OF.** The doctrine of construing written instruments as near to the intention of the parties as possible. *Shep. Touch.* (by Preston,) 83, 84. It is most commonly applied to the construction of wills, and is only another name for the general principle, (sometimes called the rule of *approximation*), of carrying into effect the testator's intention as nearly as may be according to the rules of law. *Lewis on Perpetuity*, 427. 2 *Story's Eq. Jur.* § 1169. This doctrine has been made a part of the statute law of the State of New-York. 1 *Rev. St.* [748,] 740, § 2. *Savage, C. J.*, 14 *Wendell's R.* 308.

The doctrine of *cy pres* may be more particularly stated thus; that where there is a general and also a particular intention apparent on a will, and the particular intention cannot take effect, the words shall be so construed as to give effect to the general intention. *Broom's Maxims*, 244. *Lewis on Perpetuity*, 426. 2 *Smith's Lead. Cas.* 294. Thus, in case of a donation for charitable purposes, if it be incapable of being literally acted upon, or if its literal performance would be unreasonable, a decree will be made for its execution *cy pres*, that is, in some method conformable to the general object, as closely as possible to the specific design of the donor. 3 *Steph. Com.* 230. 2 *Story's Eq. Jur.* § 1169, et seq. 2 *Kent's Com.* 288. So where limitations are made by way of remainder to the children of unborn persons, which are generally void for remoteness, there are cases in which the courts in England have so moulded, or put such construction upon the limitations, as that the unborn parent may take an estate tail, and the property vest in his issue by descent, by which all objection of remoteness is obviated. *Lewis on Perpetuity*, 426. It is this last description of cases which most commonly calls forth the application of the doctrine of *cy pres*. *Fearne on Contingent Remainders*, 204. *Butler's note, ibid.* *Lewis on Perpetuity*, 426—454. 4 *Kent's Com.* 508, notes. *Coster v. Lorrillard*, 14 *Wendell's R.* 265.

**CYMETER.** L. Fr. A burial place; a cemetery. *Britt.* c. 43.

**CYNEBOTE.** Sax. [from *cyn*, kin, or relationship, and *bot*, a satisfaction.] In Saxon law. A pecuniary composition for killing a relative; the same with *cenegild*, (q. v.) *Spelman*, voc. *Cenegild*.

**CYNK.** L. Fr. An old form of writing *cinque*. *Reg. Orig.* 72, *regula*.

**CYNSOUR DE BURSE.** L. Fr. A cutpurse; (*celuy que la bourse coupe.*) *Britt.* c. 15.

**CYRICBRYCE.** Sax. [from *cyric*, church, and *bryce*, a breaking, or breach.] In Saxon law. The act or crime of breaking into a church, [church breach.] *LL. Eccl. Canut. Regis.* *Blount*.

**CYRICSCEAT.** Sax. [from *cyric*, church, and *sceat*, a tribute.] In Saxon law. A tribute or payment due to the church. *Cowell.* *Spelman*, voc. *Circset*.

**CYROGRAFFE.** L. Fr. A chirograph, (q. v.) *Britt.* c. 21.

**CYROGRAPHUM.** L. Lat. In Saxon and old English law. The name of a deed or charter among the Saxons. 1 *Reeves' Hist. Eng. Law*, 10. See *Chirographum*.

A charter, written in two parts, with the word *cyrographum*, in capital letters between, through which it was divided by cutting. *Id.* Called also *charta cyrographata*. *Bract.* fol. 34.

One of the parts of a fine. *Finis et cyrographum.* *Bract.* fol. 50, 59, 194. See *Chirograph*.

## D.

**DA, Dea.** L. Fr. Yes. *Kelham*.

**DABIS? DABO.** Lat. (Will you give? I will give.) In the Roman law. One of the forms of making a verbal stipulation. *Inst.* 3. 16. 1. *Bract.* fol. 15 b.

**DALUS, Dailus, Dayla.** L. Lat. In old English law. A dale, valley or low place. 1 *Mon. Angl.* 680. 2 *Id.* 211.

A balk, or narrow slip of pasture left between the ploughed furrows in arable land. *Cowell*.

**DAMAGE.** L. Fr. and Eng. [L. Lat.

*damnum*, q. v.] A loss, hurt, or hindrance sustained by a party in his estate or person.\* *Cowell. En son damage*; in his damage; doing him damage. *Britt. c. 27.*

**DAMAGE CLEER.** L. Fr. and Eng. [q. d. *damage de cler*; clerk's compensation; L. Lat. *damna clericorum*.] In old English practice. A sum of money or fee which a plaintiff recovering damages in the courts of King's Bench and Common Pleas anciently had to pay to the prothonotary, or chief officer of the court, before he could have execution. It was abolished by statute 17 Car. II. c. 6. *Termes de la ley. Cowell.*

**DAMAGE FEASANT** (or FAISANT). L. Fr. [L. Lat. *damnum facientes*.] Doing damage. A term applied to a person's cattle or beasts found upon another's land, doing damage by treading down the grass, grain, &c. 3 *Bl. Com.* 7, 211. *Tomlins.* This phrase seems to have been introduced in the reign of Edward III., in place of the older expression *en son damage*, (in *damno suo*.) *Crabb's Hist. Eng. Law*, 292. See *Damage*.

**DAMAGER.** L. Fr. To injure, to oppress. *Kelham.*

**DAMAGES.** L. Fr. and Eng. [L. Lat. *damna*, q. v.] In general practice. A pecuniary compensation or satisfaction for an injury, given usually at law, but sometimes in equity.

In pleading. A sum of money claimed by the plaintiff in a personal or mixed action, as a compensation for the injury complained of.\* 1 *Chitt. Pl.* 395. 1 *Tidd's Pr.* 440. See *To lay damages*. The word, as actually used in declarations, is always in the singular, (damage, *damnum*.) the clause in which the sum is claimed beginning,—“To the damage,” &c. 1 *Tidd's Pr.* 446. See *Ad damnum*.

In practice. A sum of money assessed by a jury on finding for the plaintiff or successful party in an action, as a compensation for the injury done him by the opposite party.\* 2 *Bl. Com.* 438. *Co. Litt.* 257 a. 2 *Tidd's Pr.* 869, 870. See *General damages*, *Special damages*, *Double damages*, *Treble damages*, *Liquidated damages*, *Measure of damages*.

The word *damages* was formerly used and understood in two senses; one, called by Lord Coke the proper and general signification, which included costs of suit; the other, called the strict or relative sense, which was exclusive of costs. 10 *Co.* 116,

117. *Litt. sect.* 431. *Co. Litt.* 257 a. The latter is the modern meaning.

**DAMAIOUSE.** L. Fr. [L. Lat. *damnosus*.] In old English law. Causing damage or loss, as distinguished from *torce-mouse*, wrongful. *Britt. c. 61.*

There is no equivalent for this word in English, although a single word of the kind is much needed to express with precision the idea or quality of mere *damage*, as distinguished from *wrong* or injury.

**DAMNA.** L. Lat. [plur. of *damnum*, q. v.] In old English law and practice. Damages, inclusive of costs of suit. 10 *Co.* 116 b. *Co. Litt.* 257 a.

Damages, exclusive of costs. 10 *Co. ub. sup. Damna in duplo*; double damages. *Stat. Westm.* 2, c. 26.

**DAMNATUS.** Lat. [from *damnare*, to condemn.] In old English law. Condemned; prohibited by law, unlawful. *Damnatus coitus*; an unlawful connexion. *Bract. fol.* 5. *Qui ex damnato celtu nascuntur inter liberos non computantur*. They who are born of an unlawful connection are not reckoned among children. *Id. ibid. Co. Litt.* 8. 2 *Bl. Com.* 247.

**DAMNER, Dampner.** L. Fr. To condemn. *Dampner a la mort*; to condemn to death. *Britt. c. 5.*

**DAMNI INJURIÆ ACTIO.** Lat. In the civil law. An action for injurious damage. An action given by the Aquilian law against one who injuriously (i. e. intentionally, without right, or from carelessness,) killed the slave or beast of another. *Inst.* 4. 3. pr. 2, 3. *Id.* 4. 8. 4.

**DAMNOSUS.** L. Lat. [from *damnum*, q. v.] That which produces loss, as distinguished from *injuriousus*, or that which works a wrong. *Bract. fol.* 231 b.

**DAMNUM, Dampnum.** Lat. In pleading and old English law. Damage; loss. *Ad damnum* (q. v.); to the damage. *Damnum facientes*; doing damage. *Reg. Jud.* 27. *Pro damno facto*; for damage done. *Bract. fol.* 156. *Dicere poterit captor quod juste cepit averia sua, quia illa invenit in damno suo*; the taker may say that he justly took his beasts, because he found them in *his damage*, (i. e. doing him damage.) *Id. fol.* 158.

The word *damnum* in this last application is understood in some of the old dictionaries in the sense of an *enclosure*; but

the corresponding phrase of Britton, *en son damage*, conclusively shows the true meaning. See *Damage*. *Esse in damno*; to be in loss; to be a loser. *Bract.* fol. 23 b.

**DAMNUM.** Lat. In the civil law. Damage; the loss or diminution of what is a man's own, either by fraud, carelessness or accident. *Heinecc. Elem. Jur. Civ. lib. 3, tit. 14, § 784.* *Hallifax Anal.* b. 2, c. 24.

**DAMNUM ABSQUE INJURIA.** Lat. A loss without a wrong; that kind of damage for which an action will not lie.

*Non omne damnum inducit injuriam.* It is not every loss that produces an injury. *Bract.* fol. 45 b. If a man commence a business, sets up a trade, or opens a school in a particular place, another may do the same thing in the same place, though he draw away the business or the scholars from the other; for though it be a loss (*damnum*) to the latter, it is not coupled with such an injury (*injuria*) as to give a right of action. *Holt, C. J., 3 Salk. 10.* 3 *Bl. Com.* 219, 125, 224. 3 *Steph. Com.* 465. 1 *Smith's Lead. Cas.* 131. *Broom's Max.* 93. *Bract.* fol. 235. See *Injuria*. The kind of loss for which an action lies is called by Bracton *damnum injuriosum*, (*injurious damage*). *Bract.* fol. 221, 231 b.

**DAMNUM FATALE.** Lat. In the civil law. Fatal damage; damage from fate; loss happening from a cause beyond human control, (*quod ex fato contingit*.) and for which bailees are not liable; such as shipwreck, lightning and the like. *Dig.* 4. 9. 3. 1. *Story on Bailm.* § 465. *Story, J., 3 Story's R.* 349, 357. See *Fatum*.

**DAMNUM REI AMISSÆ.** Lat. In the civil law. A loss arising from a payment made by a party in consequence of an error of law. 1 *Mackeld. Civ. Law*, 164, § 165.

**DAMPNUM.** L. Lat. The old form of writing *damnum*. *Stat. Marlbr. c. 1.* *Bract.* fol. 98 b. So in the derivatives and compounds, *dampnificare*, *condempnare*, *indempnis*; and in the Fr. *dampner*, *solempnitie*, and other words.

**DANEGELD, Danegelt, Danigeld.** [L. Lat. *Danigeldum*, *Danegeldus*; from *Dane*, and Sax. *geld*, money or tribute.] In old English law. Money for the Danes, (*tributum Danicum*.) *Spelman.* A tax of one shilling, and afterwards two shillings, upon every hide of land in England, first imposed upon the Saxons in the reign of

king Ethelred, for the purpose of bribing the Danes to desist from their depredations, and afterwards made permanent for the purpose of maintaining an armed force to defend the coast from any invading enemies; thus becoming one of the chief branches of the royal revenue. *Spelman*, voc. *Danigeldum*. *Crabb's Hist. Eng. Law*, 61. *Termes de la ley*.

**DANELAGE, Denelage.** [L. Lat. *Danelaga*, *Denelaga*; from *Dane*, and Sax. *lage*, law.] A system of laws introduced by the Danes on their invasion and conquest of England, and which was principally maintained in some of the midland counties, and also on the eastern coast. 1 *Bl. Com.* 65. 4 *Id.* 411. 1 *Steph. Com.* 42. According to *Spelman*, it was the prevailing law from the time of king Edgar to that of Edward the Confessor, and was preferred by William the Conqueror to all the other systems which he found in England, so that he came very near imposing it upon the whole kingdom, (*parum abfuit ne toti Angliæ imposuisset*.) and this partiality was owing to the fact of the Normans being descended from the same stock with the Danes. *Spelman*, voc. *Lex Danorum*.

**DANGERIA.** L. Lat. In old English law. A payment in money made by forest tenants to the lord, that they might have leave to plough and sow in time of pannage or mast feeding. *Cowell*.

**DANS.** L. Fr. In, within. See *Deins*.

**DANUM, Danu.** Contractions of **DAMNUM**. See *Contraction*.

**DAPIFER.** Lat. [from *daps*, a feast, and *ferre*, to carry.] In old European law. A steward, either of a king or lord; a seneschal. Originally, a domestic who waited on the table. Called also *domesticus*, *megadomesticus*, *oeconomus*, *major domus*, *senescallus*, *scalculus*, *gastaldus*. *Spelman*.

**DARE.** Lat. To give; to cause a thing to be effectually his who receives it; (*rem accipientis facere cum effectu*.) *Bract.* fol. 11, 38 b. See *Do*, *Give*.

**DAREIGNER.** See *Deraigner*.

**DAREYNE.** See *Darrein*.

**DARREIN, Darreine, Darreyne, Darreyne, Darrain, Darraigne.** L. Fr. Last. *Dareyne volante*; last will. *Britt.* c. 28.

**DARREIN CONTINUANCE.** L. Fr. In prac-

tice. The last continuance. See *Continuance*, *Puis darrein continuance*.

DARREIN PRESENTMENT. L. Fr. In old English law. The last presentment. See *Assise of darrein presentment*.

DAT'. An abbreviation of *Data*, or *Datum*, (qq. v.) *Litt.* sect. 371.

DATA. L. Lat. [from *dare*, to give.] In old practice and conveyancing. The date of a deed; the time when it was given, that is, executed. *Data apud Saleford*; given at Saleford. 2 *Bl. Com.* Appendix, No. I. See *Date*, *Given*.

The date of a writ; the time when it was given, that is, granted or issued. *Bract.* fol. 176. *Britt.* c. 48. *Reg. Orig.* 26, note. *Item videndum erit si tempore datæ aliqua fuerit causa impetrandi vel nulla, et ideo respicienda erit data, si forte deleta fuerit vel in aliquo mutata*; also, it must be seen if, at the time of the date, there were any cause of [ground for] obtaining it or none; and therefore the date must be looked to, if perchance it have been erased, or altered in any respect. *Bract.* fol. 188. In modern practice this clause is called the *teste*, (q. v.)

DATE. L. Fr. and Eng. [from Lat. *data*, *datum*, or *datus*, qq. v.] In conveyancing. That part of a deed or writing which expresses the day of the month and year in which it was made or given. 2 *Bl. Com.* 304. 2 *Hilliard's Real Prop.* 333. 1 *Ld. Raym.* 84. *Tomlins*.

The formation of this now ordinary word may be clearly traced to the emphatic word of the clause by which the *time* and *place* of execution of an instrument were anciently expressed, usually at the conclusion:—*Datum apud — tali die*, &c. (GIVEN at — on such a day, &c.; or, in French, *Donné à — &c.*) From this emphatic Latin word *datum*, the L. Fr. word *date* seems to have been immediately formed as a name for the whole clause, and afterwards adopted as an English word of more general application. That the earliest use of *date* was as a French word, appears from the following passages of Britton: *Et pur ceo est bone cautele pur ceuz que fount faire chartre, que date soit mys del jour, et del lieu, et del an*; and therefore it is a good precaution for those who are about to make a charter, [deed,] that the *date* be put of the day, and of the place and of the year. *Britt.* c. 39. *Par defaute de date est le brefe abatable et vicious*; by defect of the *date* is the writ abatable and faulty. *Id.* c. 48. The first of these

passages is also important as showing the time when dates in deeds began to come into use.

The use of this *datum* clause, or *date*, was common to a great variety of instruments, public as well as private. Thus, *Magna Charta* itself concludes: *Datum apud Westmonasterium, decimo die Februarii, anno regni nostri* [Hen. III.] *nono*. (Given at Westminster, the tenth day of February, in the ninth year of our reign.) So the French Statute of Tithes (18 Edw. III.): *Donné à Londres, le 8 jour de July, &c.* (Given at London, the eighth day of July, &c.) The style of the literal translation "Given," &c. is still preserved in public instruments requiring greater formality of style, such as proclamations of state: "Dated," &c. being appropriated to private writings. See *Datum*, *Done*.

DATIO. Lat. [from *dare*, to give.] In the civil law. A giving, or act of giving. *Datio in solutum*; a giving in payment; a species of accord and satisfaction. Called in modern law, *dation*. *Bouvier*.

Appointment or assignment. *Datio judicis*; appointment of a *judex* to hear and determine a cause. *Hallifax Anal.* b. 3, c. 9, num. 19. See *Do*, *Dico*, *Addico*. *Datio tutoris*; the appointment of a tutor or guardian by the prætor or a magistrate, where none had been provided by will or by law. *Inst.* 1. 20. *Heinecc. Elem. Jur. Civ. lib.* 1, tit. 20.

DATIVE. [L. Lat. *dativus*; L. Fr. *datif*.] In old English law. In one's gift; that may be given and disposed of at will and pleasure. Applied to an officer in the sense of *removeable*, as distinguished from *perpetual*. *Stat.* 9 Ric. II. c. 4. *Stat.* 45 Edw. III. cc. 9, 10. *Cowell*.

In the civil law. That which is given by the magistrate, as distinguished from that which is cast upon a party by the law or by a testator. *Bouvier*. A *dative executor* (Fr. *exécuteur datif*), answers to the administrator of the common law. *Code of Louis.* Art. 1671, 1672.

DATUM. L. Lat. [from *dare*, to give.] In old conveyancing. Given, dated. *Co. Litt.* 6 a.

A date. See *Date*.

DATUS. Lat. [from *dare*, to give.] In old conveyancing. Date or giving. *Dies datús*; the day of the date. 2 *Salk.* 413. See *A datu*.

DAVACUS. L. Lat. In old Scotch

law. A portion of land, containing four ploughlands. *Skene de Verb. Signif.*

DAY. [Lat. *dies*; Fr. *jour*.] A period of time consisting of twenty-four hours, and including the solar day and the night. *Co. Litt.* 135 a. *Bract. fol.* 264. An artificial period of time, computed from one fixed point to another, without any reference to the natural distinction between day and night; and hence very expressively termed by Bracton an *artificial day*.\* *Efficitur dies qui dicitur artificialis ex die precedente et nocte subsequente. Bract. ub. sup. Britt.* c. 80. A day, in contemplation of law, usually comprises all the twenty-four hours, beginning and ending at twelve o'clock at night. Therefore, in general, if I am bound to pay money on any certain day, I discharge the obligation if I pay it before twelve o'clock at night, after which the following day commences. *2 Bl. Com.* 141. *1 Steph. Com.* 265. This is otherwise called, as among the Romans, a *civil day*. *Adam's Rom. Ant.* 358. See *Dies juridicus, Sunday*.

A period of time of variable length, beginning at day-break and ending with twilight, as distinguished from night.\* See *Night*. This has been termed by some of the old writers an artificial day. *Termes de la ley. Cowell*. But the epithet artificial rather belongs to the civil day (*supra*), than this, which is a natural period, being merely the solar day (*infra*) extended to its utmost limits. A *solar day*, according to Lord Coke, begins at sunrise and ends at sunset. *Co. Litt.* 135 a. This is the same with the *natural day* of the Romans. In modern science, the term *solar day* has quite a different meaning, denoting the interval between two noons. *Brande*.

DAY. [Lat. *dies*.] In practice and pleading. A particular time assigned or given for the appearance of parties in court, the return of writs, &c. See *Days in bank, Dies datus, Return day*. It was only by means of *days* thus given that a suit anciently could be continued in court; and where a day was not given it was equivalent to a discontinuance, and the suit came to an end. A defendant was said to go without day, (*sine die*) when he was finally dismissed from court. See *Continuance, Sine die, Without day*.

DAYBREAK. [L. Lat. *lux diei ortus*.] *Cro. Jac.* 106.

DAYLIGHT. [L. Lat. *diurnum lumen, crepusculum*.] That portion of time before

sunrise, and after sunset, which is accounted part of the day (as distinguished from *night*), in defining the offence of burglary. *4 Bl. Com.* 224. *Cro. Jac.* 106. See *Burglary*.

DAY RULE. In English practice. A rule granted (or rather a certificate of the Court of Queen's Bench having granted a rule) to a prisoner, permitting him to go beyond the *rules*, (that is, the limits) of the prison for the purpose of transacting his business. So called because granted only for a *day*; the prisoner being required to return to the prison at or before nine o'clock of the evening of the day for which the rule was granted. *2 Archb. Pr.* 131. *Archb. New Pract.* 529. *1 Tidd's Pr.* 374. *Sewell's Law of Sheriff*, 69.

DAYS IN BANK. [L. Lat. *dies in banco*.] In practice. Certain stated days in term appointed for the appearance of parties, the return of process, &c., originally peculiar to the Court of Common Bench, or bench (bank) as it was anciently called. *3 Bl. Com.* 277. See *Bank, Bench, Dies communes in banco*.

DAYS OF GRACE. In mercantile law. Days (usually three in number) allowed by the custom of merchants for the payment of bills of exchange and promissory notes, (except such as are payable on demand, or where no time of payment is expressed,) beyond the day expressed for payment on the face of them; the bill or note not actually becoming payable until the third day of grace. *3 Kent's Com.* 100, 104, and notes. *2 Steph. Com.* 164. *Chitty on Bills*, 374. *Story on Bills*, §§ 333—343.

DAYS OF GRACE. [L. Lat. *dies gratiæ, or amoris*.] In old practice. Three days allowed to persons summoned in the English courts, beyond the day named in the writ, to make their appearance; the last day being called the *quarto die post*. *3 Bl. Com.* 278. See *Quarto die post*. This practice has been traced, through the feudal law, to the customs of the ancient Germans. *Id. ibid.* See *Dies gratiæ*.

DAYS MAN. [from *day*, judgment, according to some.] An arbitrator, umpire or elected judge. *Cowell*.

DAYWERE. In old English law. A term applied to land, and signifying as much arable ground as could be ploughed up in one day's work. *Cowell*.

DE. Lat. and L. Lat. Of, about, concerning, respecting. *De donis*, (q.v.) *De mercatoribus*, (q.v.) *De homicidio*. *Bract.* fol. 120 b. *De terra*. *Id.* 112. *De actionibus*. *Id.* 98 b.

Of; affecting. *Si quis appellatus est de vita et membris*; if one is appealed [accused] of a matter affecting life and limbs. *Bract.* fol. 112 b.

Of; about, against. *De quo queritur*; of whom complaint is made. *Id.* fol. 182.

Of; by, arising from. *De gratia, magis quam de jure*; of favor or grace, rather than of right. *Id.* fol. 118 b. *De necessitate*. *Id.* fol. 144 b. *De consuetudine*. *Id.* fol. 161 b.

Of; from, out of. *De quolibet burgo*; out of every borough. *Id.* fol. 109 b. *Disseysina de libero tenemento*; disseisin of freehold. *Id.* fol. 161 b.

Of; among, from. *Quilibet de populo*; any one of the people. *Id.* fol. 118 b.

Of; in consequence of. *Obiit de plaga*; he died of the wound. *Id.* fol. 138.

Of; out of, issuing or derived from. *Redditus de tenemento*; rent of a tenement. *Id.* fol. 184.

Of; from, under. *Tenere de rege*; to hold of the king. *Id.* fol. 106.

Of; by, upon. *Felonia de se*; felony of himself. *Id.* fol. 150.

Of; out of, with. *Fiat messuagium de bosco communi*; a messuage shall be built of common wood. *Id.* fol. 97 b.

Of; as to, in regard to. *De hoc*. *Id.* fol. 113, *et passim*. *Si de hoc constare possit*; if it can be made to appear in regard to this. *Id.* fol. 131.

Of; in. *De termino*. *Id.* *passim*. *De itinere*. *Id.* *De placito*, (q.v.)

Of; on. *De materia*; on the subject. *Id.* fol. 130, *et passim*.

Of; in the sense of the genitive case. *Aliquo tempore de die vel de nocte*; at any time of the day or night. *Id.* fol. 119. *Seysina de hæreditate*; seisin of the inheritance. *Id.* fol. 130. *Hominibus de Ierne-mewe, et ballivis de Doneviz*; to the men of Yarmouth, and the bailiffs of Dunwich. *Id.* fol. 118.

Of; in the sense of part or portion. *Nihil restituetur ei de precio quod solvit*; no part of the price that he paid shall be restored to him. *Id.* fol. 151.

Of; in the sense of criminal participation. *Indictari de latrocinio*; to be indicted of larceny. *Id.* fol. 132. *Culpabiles de homicidio*; guilty of homicide. *Id.* fol. 121. *De crimine convictus*; convicted of crime. *Id.* fol. 123 b.

From. *De loco in locum*; from place to

place. *Id.* fol. 115 b. *De verbo in verbum*; from word to word. *Id.* fol. 111, 146.

For. *Ad respondendum de pretio*; to answer for the price. *Id.* fol. 121 b.

For; in respect of. *De bono et malo*; for good and ill. *Id.* fol. 143 b.

For; about. *De re agere*; to sue for a thing; to go to law about it. *Id.* fol. 113 b.

By; according to. *De jure gentium*; by the law of nations. *Id.* fol. 102 b. *De jure naturali*; by the law of nature. *Id.* fol. 120.

By; with. *De consilio curiæ*; by the advice or direction of the court. *Id.* fol. 185 b. *De consensu partium*; by consent of parties. *Id.* fol. 206 b.

By; during. *De nocte vel de die*; by night or by day. *Id.* fol. 184. *De clara die*; by daylight. *Id.* fol. 137 b.

In. *De æquitate*; in equity. *Id.* fol. 96 b. *De facto*, (q.v.); in fact.

With. *De denariis suis emptum*; bought with his monies. *Id.* fol. 198 b.

The foregoing are the most important of the numerous senses in which this very common particle occurs in the language of the old law, and in technical phrases still in use. In the titles of the old English statutes, and of writs original and judicial, as well as in the ordinary formulæ of the courts, its prevailing sense is *of*, that is, *about*, *concerning* or *respecting*. Another very common use of it, (as of the law French *de*,) is to express the genitive case, either where the words employed do not admit of the necessary inflection for that purpose, or where it was supposed to convey the meaning with greater aptness and precision. The examples of the different significations are taken, it will be seen, almost without exception from Bracton, whose style may be considered as exhibiting the purest specimen of legal Latinity to be met with among the ancient writers on the law of England.

DE. L. Fr. Of; about, concerning. *De homicides*. *Britt.* c. 5. *De attornes*. *Id.* c. 128.

Of; out of, by. *Plus d'grace q'd'droit*; more of favor than of right. *Id.* c. 69.

Of; out of, composed of. *Que est fait del jour et de la nuyt suauante*; which is made up of the day and the following night. *Id.* c. 80.

Of; from, under. *Que il tiendra de luy*; which he shall hold of him. *Id.* c. 68.

Of; in the sense of the genitive case. *Brefe de droit*; writ of right. *Id.* *passim*. *En roule de coroner*; in the roll of the coroner. *Id.* c. 24, 25.



Of; in the sense of connexion or relation. *De son saunk*; of his blood. *Id.* c. 23.

Of; in the sense of criminal participation. *Coupables de felonie*; guilty of felony. *Id.* c. 24.

Of; in the sense of character or quality. *De fraunk estate*; of free estate. *Id.* c. 49.

Of; in the sense of attainment. *De age*. *Id.* c. 74. *De pleyn age*; of full age. *Id. ibid.*

Of; in the sense of possession. *Seisins de son heritage*; seisin of his inheritance. *Id. ibid.*

Of; out of; in the sense of dispossession. *Engette de son fraunk tenement*; ejected of his freehold. *Id.* c. 42.

Of; in the sense of privation. *Delayer de lour droit*; to delay of their right. *Id.* c. 84.

To; (with the infinitive.) *Plegges de suer*; pledges to prosecute. *Id.* c. 24. *Plegges de respondre et de retourner*; pledges to answer and to return. *Id.* c. 28. *Sommouns de estre*; summoned to be. *Id. ibid.* *Destreintz de vener*; distrained to appear. *Id. ibid.* *Jugement de estre treyne et pendu*; judgment to be drawn and hanged. *Id.* c. 23.

From; (in time.) *De ceo jour en avaunt*; from this day forward. *Id.* c. 68. *De jour en jour*. *Id.* c. 78.

From; (in place.) *Exyl de nostre roy-alme*; banishment from our realm. *Id.* c. 16.

From; in the sense of origin or derivation. *Descent de un cep*; descent from one stock. *Id.* c. 70.

For; in return for. *Dues de ma porcion*; due for my portion. *Id.* c. 68.

By. *De un baron a une femme*; by a husband to a wife. *Id.* c. 102.

In. *De play [or plez] de terre*; of (in) a plea of land. *Id.* c. 123. *De fee*. *Id. passim.*

On. *De coste*; on the side. *Id.* c. 119. *De part piere, come de part le mere*; on the side of the father as on the side of the mother. *Id.* c. 89.

With. *De dirs enkes*; with different inks. *Id.* c. 48.

With; by. *De la consente*; with the consent. *Id.* c. 24.

**DE ADMENSURATIONE DOTIS, Breve.** L. Lat. Writ of admeasurement of dower. A writ which lies where a widow has assigned to her by the heir or his guardian more land as dower than rightly belongs to her; commanding the sheriff to cause the dower to be admeasured. *Reg. Orig.* 171. *F. N. B.* 148, *F. G.* 3 *Bl. Com.* 383. 1 *Steph. Com.* 254. See *Ad-measurement of dower*.

**DE ADMENSURATIONE PASTURÆ.** See *Admeasurement of pasture*.

**DE ADVISAMENTO CONSILII NOSTRI.** L. Lat. With or by the advice of our council. A phrase used in the old writs of summons to parliament. *Reg. Jud.* Appendix, 7, 8. *Crabb's Hist. Eng. Law*, 240.

**DE ÆTATE PROBANDA, Breve.** L. Lat. Writ of (about) proving age. An old writ which lay to the escheator or sheriff of a county, to summon a jury to inquire whether the heir of a tenant *in capite*, claiming his estate on the ground of full age, was, in fact, of age or not.\* *Reg. Orig.* 294. *F. N. B.* 257.

**DE ALLOCATIONE FACIENDA, Breve.** L. Lat. Writ for making an allowance. An old writ directed to the lord treasurer and barons of the exchequer, for allowing certain officers (as collectors of customs) in their accounts, certain payments made by them.\* *Reg. Orig.* 192.

**DE ALTO ET BASSO.** L. Lat. Of high and low. A phrase anciently used to denote the absolute submission of all differences to arbitration. *Cowell*, voc. *Alto et basso*. *Stat. Wallie*, 12 *Edw. I.* 2 *Reeves' Hist. Eng. Law*, 96.

**DE AMBITU.** Lat. Concerning bribery. *Ambitus* (bribery) was the subject of several of the Roman laws; as the *Lex Aufidia*, the *Lex Pompeia*, the *Lex Tullia*, and others. See *Ambitus*.

**DE AMPLIORI GRATIA.** L. Lat. Of more abundant or especial grace. *Towns. Pl.* 18.

**DE ANNO BISSEXTILI.** Of the bissextile or leap year. The title of a statute passed in the 21st year of Henry III. which in fact, however, is nothing more than a sort of writ or direction to the justices of the bench, instructing them how the extraordinary day in the leap year was to be reckoned in cases where persons had a day to appear at the distance of a year, as on the essein *de malo lecti*, and the like. It was thereby directed that the additional day should, together with that which went before, be reckoned only as one, and so, of course, within the preceding year. 1 *Reeves' Hist. Eng. Law*, 266. See *Bissextile*.

**DE ANNUA PENSIONE, Breve.** L. Lat. Writ of annual pension. An ancient

writ by which the king having a yearly pension due him out of an abbey or priory for any of his chaplains, demanded the same of the abbot or prior, for the person named in the writ. *Reg. Orig.* 265 b, 307. *F. N. B.* 231 G. *Termes de la ley.*

**DE ANNUO REDDITU,** *Breve.* L. Lat. [L. Fr. *breve d'annuitie.*] A writ of annuity. A writ for recovering an annuity whether payable in money or goods. *Reg. Orig.* 158 b. *F. N. B.* 152 A. 2 *Reeves' Hist. Eng. Law*, 258.

**DE APOSTATA CAPIENDO,** *Breve.* L. Lat. Writ for taking an apostate. A writ which anciently lay against one who, having entered and professed some order of religion, left it and wandered up and down the country, contrary to the rules of his order, commanding the sheriff to apprehend him and deliver him again to his abbot or prior. *Reg. Orig.* 71 b, 267. *F. N. B.* 233, 234.

**DE ARRESTANDIS BONIS NE DIS-  
SIPENTUR,** *Breve.* L. Lat. An old writ which lay to seize goods in the hands of a party during the pendency of a suit, to prevent their being made away with. *Reg. Orig.* 126 b.

**DE ARRESTANDO IPSUM QUI  
PECUNIAM RECEPIT,** *Breve.* L. Lat. An old writ which lay for the apprehension of one who had taken the king's prest money to serve in the war, and hid himself when he should go. *Reg. Orig.* 24 b. *Blount.*

**DE ASPORTATIS RELIGIOSORUM.** L. Lat. Concerning the property of religious persons carried away. The title of the statute 35 Edward I. passed to check the abuses of clerical possessions, one of which was the waste they suffered by being drained into foreign countries. 2 *Reeves' Hist. Eng. Law*, 157. 2 *Inst.* 580.

**DE ASSISA CONTINUANDA,** *Breve.* See *De continuando assisam.*

**DE ASSISA PROROGANDA,** *Breve.* L. Lat. Writ for proroguing an assise. A writ anciently directed to the justices assigned to take assizes, commanding them to prorogue or postpone an assize to a certain day; where one of the parties could not attend in consequence of being employed in the king's service. *Reg. Orig.* 207 b, 221 b.

**DE ATTORNATO RECIPIENDO,**

*Breve.* L. Lat. Writ for receiving an attorney. A writ which anciently lay to the judges of a court, requiring them to receive and admit an attorney for a party. *Reg. Orig.* 26 b, 172, et *passim.* *F. N. B.* 156 D.

**DE AUDIENDO ET TERMINANDO.** L. Lat. [L. Fr. *d'oyer et terminer.*] For hearing and determining; to hear and determine. The name of a writ, or rather commission granted to certain justices to hear and determine cases of heinous misdemeanour, trespass, riotous breach of the peace, &c. *Reg. Orig.* 123, et *seq.* *F. N. B.* 110 B. See *Oyer and Terminer.*

**DE AVERIIS CAPTIS IN WITHER-  
NAMUM,** *Breve.* L. Lat. Writ for taking cattle in withernam. A writ which lay where the sheriff returned to a *pluries* writ of replevin, that the cattle or goods, &c., were eloiued, &c.; by which he was commanded to take the cattle of the defendant in withernam, and detain them until he could replevy the other cattle. *Reg. Orig.* 82. *F. N. B.* 73, E. F. See *Withernam.*

**DE AVERIIS REPLEGIANDIS,** *Breve.* L. Lat. Writ for replevying beasts. A writ directed to the sheriff, commanding him to cause to be replevied for a party his beasts or chattels, &c., which another had taken and unjustly detained. *Reg. Orig.* 81. Otherwise called a writ *de replegiare de averiis.* *F. N. B.* 68 D. The old writ of replevin. See *Replegiari facias, Replevin.*

**DE AVERIIS RETORNANDIS.** L. Lat. For returning the cattle. A term applied to pledges given in the old action of replevin. 2 *Reeves' Hist. Eng. Law*, 177.

**DE AVO,** *Breve.* L. Lat. Writ of aiel or ayle. *Reg. Orig.* 226.

**DE BANCO.** L. Lat. Of the bench. A term formerly applied in England to the justices of the Court of Common Pleas, or Bench, as it was originally styled. *Rex justitiariis suis de banco, salutem*; the king to his justices of the bench, greeting. *Reg. Orig.* 19, et *passim.* *Coram justitiariis nostris de banco*; before our justices of the bench. *Id.* 168, et *passim.* A distinction was made between the phrases *curia nostra de banco*, (our court of the bench,) and *curia de banco nostro*, (the court of our bench;) the former being held to signify the Common Bench or Common Pleas, the latter the King's Bench. 1 *Stra.* 302.

**DE BENE ESSE.** L. Lat. [L. Fr. *del bien estre*.] In old practice and conveying. Of well being ; of form ; of mere form ; of necessary, sufficient or advisable form ; of good precaution ; of contingent or possible utility or necessity ; of conditional or permissive validity. To pass as a matter of form ; to be advisable in point of form ; to be allowed, as of present formal sufficiency, with reference to something future. See *infra*.

In modern practice. Of well being ; of present or temporary formal sufficiency ; of conditional validity ; conditionally. To be good or valid for the present, subject, however, to some future and further proceeding. A term applied to such acts or proceedings as are done or permitted to take place in an action, but the validity or effect of which depends upon some subsequent act, fact, matter or proceeding. Thus, to declare *de bene esse* in a bailable action, is to declare *on condition* that bail is duly put in, which is expressed by the endorsement of the words "*de bene esse*" on the declaration itself. When bail is put in, the declaration becomes absolute, as in other cases. 1 *Archb. Pr.* 121. 1 *Tidd's Pr.* 419. To examine a witness *de bene esse* is to examine him out of court before the trial, *subject to the contingency* of his being able to attend court at the trial. If he be unable to attend, such examination is good, and the deposition may be read in evidence on the trial. But if he be able to attend, the examination is of no validity, and he must be examined again at the trial in the usual way. *Grah. Pr.* 584. 1 *Burr. Pr.* 212, 447. The common practice of allowing a jury to find a verdict subject to the opinion of the court, is properly a proceeding *de bene esse*, and was anciently so called, as it still is, occasionally. *Dyer*, 55 b, 120.

The precise literal meaning of this very old, but still common technical expression, (the practical import of which is well enough understood,) seems to have been a matter of uncertainty and difficulty ever since the time of Cowell, who observes that "*de bene esse* are common Latin words, but their meaning something more dark." This obscurity has doubtless principally arisen from the peculiar structure of the phrase itself, which has rendered a literal translation into English a matter of so much difficulty, that most interpreters, following Cowell's example, have contented themselves with expressing the sense in terms of as close approximation as was supposed practicable. From this circumstance, in connexion with the apparent absence of words expressive of the

idea of *condition*, now inseparable from its meaning, it has sometimes been supposed to be a fragment of a longer phrase or sentence, which supplied the words (now lost) necessary to complete the sense. A reference to its origin, however, will tend, it is believed, to show that it is not only perfect in itself, and as well constructed as many other phrases in the same technical dialect, but that the material idea of *condition* is still inherent in its emphatic word *bene*, though in a great degree obscured by the more modern application of it. The phrase itself, it may be observed, appears to have been not originally a Latin one, but a very literal translation of the law French *del bien estre*, of which more will be said presently. This, at least, may be assumed from the circumstance that it is not to be found in Bracton,—the great source of most of the technical Latin of the English law,—while in the law French of Britton it not only occurs in form, but its component words are constantly used in connexions which throw an important light upon its meaning. Thus, in the chapter *De chartres*, in explaining the forms of the charters or deeds of the time, and what words were advisable or necessary to be used in them, it is said by this author of certain words, "*Car teles paroles sont plus del bien estre que de la substance de la besoigne, nequedent tout soient teles p'oles mys en escritz, eles ne grevent nient ;*" which may be literally rendered, "for such words are more of form (more *de bene esse*) than of necessary substance ; nevertheless, if they are put in writings, they do no harm." *Britt.* c. 39. The context here plainly shows the meaning of *del bien estre* to be, *of form*,—literally, *of well being*,—which may be considered the original sense ; *bien*, the emphatic word, (like the Latin *bene*,) being continually used by the same author to denote *form*, with the modifications of *mere* or *indifferent form*, (as in the passage quoted,) *sufficient form*, *necessary form*, and *advisable form*, according to its various applications. Thus, a writ is said to be *mye bien conceu*, not well conceived, that is, insufficient in form, or not framed according to a necessary prescribed form. *Britt.* c. 48. So, it is said of certain defendants in a writ, "*ils se mettent bien en Dieu, et en la grand assise* ; they put themselves well (that is, in solemn form) on God, and on the grand assise. *Id. ibid.* The corresponding English word "*well*" is constantly used in the old reports in precisely the same sense ; the phrase of the court being,—where a writ or count is objected to as insufficient in form, and held to be good—"the writ (or count) is *well*."

Another modification of this radical idea of *form* expressed by the word *bien*, (and the most important one for the purpose of the present illustration,) is that of *advisable form*. Thus, where the insertion of a word or clause in an instrument is recommended as advisable or prudent, the language of the author already quoted is,—*fait bien a especifier*; it is well to specify, (or *bon est de especifier*, it is good to specify; *est bone cautele*, it is a good precaution,) as distinguished from "*convendra*," or "*necessarie*," which are the words used where a form is directed as necessary. *Britt. c. 39*. So, in regard to miscellaneous matters of practice, it is constantly said,—*fait bien a prendre gages*, it is well to take pledges or security; *fait bien examiner le verdict*, it is well to examine the verdict; and the like. *Id. cc. 51, 97*. It is from this ancient sense of *bien* or *bene*,—(still accurately expressed by the English "*well*,")—the radical idea of which is, *form observed with reference to future, rather than present use or effect*,—that the phrase *de bene esse* appears to have derived the sense of *conditional validity*, now inseparable from its meaning in practice, and which has already been sufficiently explained.

From the first quotation above given from Britton, it will be seen that *del bien estre* was employed at the remote age of that author, as a phrase in the law of *conveyancing*. As early as the time of Dyer, however, it (or its Latin equivalent, *de bene esse*) seems to have become more exclusively used as a technical term of practice, and in nearly or quite the sense which the latter phrase now bears. This will appear from the following passages taken from the original law French of Dyer's Reports, which are moreover important as showing about what time the French became exchanged for the Latin form which has ever since been used. *Al peril del plaintife*, *de bene esse, le verdict fuit pris*; at the peril of the plaintiff, *de bene esse*, the verdict was taken. *Dyer, 55 b. Le jurie fuyt charge de bene esse de inquirend' des damages, &c.*; the jury was charged *de bene esse* to inquire of the damages. *Id. 120 a. Et auxi charge, de bien esse, si le plaintife fuit, &c.*; and also charged, *de bien esse*, if the plaintiff was, &c. *Id. 120 b. Et le jurie charge al request del accessory, de bien esse, d'enquiere de les abettors, &c.*; and the jury was charged at the request of the accessory, *de bien esse*, to inquire of the abettors, &c. *Id. ibid.*

As to the peculiar structure of the phrase *de bene esse* in a grammatical point of view, it will be sufficient to observe that *esse* and its compounds are constantly employed in law Latin as substantives, in connexion

with prepositions, adjectives and other part of speech. *In esse* (in being) will occur as a very common example of this kind of construction, which, though uncouth and barbarous, seems to be necessary in order to express the intended idea with brevity, and at the same time with entire precision. The style of the infinitive, however, is still sometimes observed in translation, as will be seen from the definitions already given. See *Esse*.

DE BIEN ESTRE. See *De bene esse, Del bien estre*.

DE BIEN ET DE MAL. L. Fr. For good and evil. A phrase by which a party accused of a crime anciently put himself upon a jury; indicating his entire submission to their verdict. *Stat. Glocest. c. 9. 2 Reeves' Hist. Eng. Law, 153*. See *De bono et malo*.

DE BIGAMIS. L. Lat. Concerning men twice married. The title of the statute 4 Edw. I. st. 3; so called from the initial words of the fifth chapter. *2 Inst. 272. 2 Reeves' Hist. 142*. It contains only six chapters, and from certain peculiarities in the mode of its passage, it was at one time doubted whether it was properly an act of parliament; but it has always been received as one. *Id. ibid.* See *Bigamus, Bigamy*.

DE BONE MEMORIE. L. Fr. Cf good memory; of sound mind. *Stat. Mod. Lev. Fines. 2 Inst. 510*.

DE BONIS ASPORTATIS. L. Lat. For goods taken away; for taking away goods. The action of trespass for taking personal property is technically called *trespass de bonis asportatis*. *1 Tidd's Pr. 5. Browne on Actions, 402*.

DE BONIS NON. An abbreviation of *De bonis non administratis*, (q.v.) *1 Stra. 34*.

DE BONIS NON ADMINISTRATIS. L. Lat. Of the goods not administered. Where the administration of the estate of an intestate is left unfinished, in consequence of the death, removal, &c., of the administrator, and a new administrator is appointed, the latter is termed an administrator *de bonis non*; i. e. of the goods of the deceased not administered by the former administrator. *2 Steph. Com. 243*. An administrator of this kind is also sometimes appointed to succeed an executor. *Id. ibid.*

DE BONIS NON AMOVENDIS, *Breve*. L. Lat. Writ for not removing goods. A

writ anciently directed to the sheriffs of London, commanding them, in cases where a writ of error was brought by a defendant against whom a judgment was recovered, to see that his *goods and chattels* were safely kept *without being removed*, while the error remained undetermined, so that execution might be had of them, &c. *Reg. Orig.* 131 b. *Termes de la ley*. This seems to have been a local writ.

**DE BONIS PROPRIIS.** L. Lat. Of his own goods; of the proper goods of a defendant. A term applied to a judgment rendered against an executor or administrator, awarding execution against his individual property. 2 *Archb. Pr.* 148, 149. 1 *Stra.* 20. 8 *Wheaton's R.* 675.

**DE BONIS TESTATORIS or INTES-TATI.** L. Lat. Of the goods of the testator, or intestate. A term applied to a judgment awarding execution against the property of a testator or intestate, as distinguished from the individual property of his executor or administrator. 2 *Archb. Pr.* 148, 149. 8 *Wheaton's R.* 675.

**DE BONIS TESTATORIS SI, &c., ET SI NON, &c., DE BONIS PROPRIIS.** L. Lat. Of the goods of the testator, [in the hands of an executor defendant,] if, [he have so much thereof in his hands to be administered,] and if not, [then the costs to be levied,] of the defendant's own goods. One of the forms of judgment in an action against an executor. 2 *Archb. Pr.* 148. 18 *Johns. R.* 502. 19 *Id.* 266.

**DE BONO ET MALO.** L. Lat. For good and evil. A phrase in old pleadings, by which a party accused or appealed put himself upon a jury. *Et quod inde culpabilis non sit, ponit se super patriam* de bono et malo; and that he is not guilty thereof, he puts himself upon the country for good and evil. *Bract.* fol. 138 b. *Ponit se super linguas vestras de hoc, de bono et malo.* *Id.* fol. 143 b. The same as the Fr. *de bien et de mal*, (q. v.)

The name of a special writ of gaol delivery. Instead of the general commission of gaol delivery under which the judges in England now act on the assizes, it was anciently the course to issue special writs of gaol delivery for each particular prisoner, which were called writs *de bono et malo*. 2 *Inst.* 43. 4 *Bl. Com.* 270.

**DE BONO GESTU.** L. Lat. For good behaviour.

**DE CÆTERO, DE CETERO.** L. Lat. [L. Fr. *desormes*.] Henceforth, henceforward; hereafter, in future. *Quod voluntas donatoris de cetero observetur*; that the will of the donor be henceforward observed. *Stat. De Donis*, 13 *Edu. I. c. 1*. *De cætero non recedant querentes a curia domini regis, pro eo quod tenementum transfertur de uno in alium*; hereafter plaintiffs shall not go [i. e. as unsuccessful in their actions] from the king's court, because the tenement is transferred from one to another. *Stat. Westm.* 2, c. 24. *Nulla riparia defendantur de cetero*; no banks shall hereafter be enclosed. *Magna Charta*, c. 16. See *Id.* c. 28.

**DE CALCETO REPARANDO, Breve.** L. Lat. Writ for repairing a causeway. An old writ by which the sheriff was commanded to distrain the inhabitants of a place to repair and maintain a causeway, &c. *Reg. Orig.* 154.

**DE CAPITALIBUS DOMINIS FEODI.** L. Lat. Of the chief lords of the fee. A phrase in ancient charters, denoting the tenure by which the estate granted was to be held. 2 *Bl. Com.* 298, 299. See *Chief Lord*.

**DE CARTIS [or CHARTIS] REDDENDIS, Breve.** Writ for rendering or re-delivering charters, or deeds. A writ of detinue of charters. *Reg. Orig.* 159 b. *F. N. B.* 138. See *De catallis reddendis*.

**DE CATALLIS REDDENDIS, Breve.** L. Lat. Writ for rendering chattels. A writ to compel the specific delivery of chattels detained from the owner. *Reg. Orig.* 139 b. *O. N. B.* 63. A writ of detinue. *F. N. B.* 138. *Cowell*.

**DE CAUTIONE ADMITTENDA, Breve.** Writ to take caution or security. A writ which anciently lay against a bishop who held an excommunicated person in prison for his contempt, notwithstanding he had offered sufficient security (*idoneam cautionem*) to obey the commands of the church; commanding him to take such security and release the prisoner. *Reg. Orig.* 66. *F. N. B.* 63, C.

**DE CERTIFICANDO, Breve.** L. Lat. A writ for certifying, or requiring a thing to be certified. A species of *certiorari*. *Reg. Orig.* 151, 152 b.

**DE CERTIORANDO, Breve.** L. Lat. A writ for certifying. A writ directed to

the sheriff, requiring him to certify to a particular fact. *Reg. Orig.* 24.

DE CHAMPERTIA, *Breve*. L. Lat. Writ of champerty. A writ directed to the justices of the bench, commanding the enforcement of the statute of *champertors*. *Reg. Orig.* 183. *F. N. B.* 172. See *Champerty*.

DE CHIMINO, *Breve*. L. Lat. Writ of way. A writ for the enforcement of a right of way, (*chimum*). A species of *quod permittat*. *Reg. Orig.* 155. See *Quod permittat*.

DE CLAMIA ADMITTENDA IN ITINERARE PER ATTORNATUM, *Breve*. L. Lat. An ancient writ by which the king commanded the justices in eyre, to admit a person's claim by attorney, who was employed in the king's service, and could not come in his own person. *Reg. Orig.* 19 b.

DE CLAUSO FRACTO. L. Lat. Of close broken; of breach of close. See *Clausum fregit*.

DE CLERICO ADMITTENDO, *Breve*. L. Lat. Writ for admitting a clerk. The writ of execution in a *quare impedit*, directed to the bishop, and commanding him to admit the plaintiff's clerk. Otherwise called a writ *ad admittendum clericum*. 3 *Chitt. Bl. Com.* 413, and note. 3 *Steph. Com.* 665, and note.

DE CLERICO CAPTO PER STATUTUM MERCATORUM DELIBERANDO, *Breve*. L. Lat. Writ for delivering a clerk arrested on a statute merchant. A writ for the delivery of a clerk out of prison, who had been taken and imprisoned upon the breach of a statute merchant. *Reg. Orig.* 147 b. See *Clericus*.

DE CLERICO CONVICTO DELIBERANDO, &c., *Breve*. See *Ad deliberandum clericum*, *Reg. Orig.* 69.

DE CLERICO INFRA SACROS ORDINES CONSTITUTO NON ELIGENDO IN OFFICIUM, *Breve*. A writ directed to bailiffs, or others who had thrust a bailiwick or beadleship upon one in holy orders, commanding them to release him, or to desist from their attempts to compel him to discharge the office. *Reg. Orig.* 187 b.

DE CLERO. L. Lat. Concerning the

clergy. The title of the statute 25 Edw. III. st. 3; containing a variety of provisions on the subject of presentations, indictments of spiritual persons, and the like. 2 *Reeves' Hist. Eng. Law*, 378. *Crabb's Hist.* 270.

DE COMBUSTIONE DOMORUM. L. Lat. Of house burning. One of the kinds of appeal formerly in use in England. *Bract.* fol. 146 b. 2 *Reeves' Hist.* 38.

DE COMMUNI CONSILIO REGNI. L. Lat. By the common council, (or parliament) of the kingdom. A phrase anciently used in reciting the passage of statutes. *Reg. Orig.* 16. See *Commune concilium*.

De communi consilio, *super negotiis quibusdam arduis et urgentibus regem, statum, defensionem regni Angliæ et ecclesiæ Anglicanæ concernentibus*; in parliament, upon certain difficult and urgent matters affecting the king and the state and defence of the realm and church of England. 1 *Bl. Com.* 159.

DE COMMUNI DIVIDUNDO. Lat. For dividing a thing held in common. The name of an action given by the civil law. *Inst.* 4. 6. 20. *Id.* 4. 17. 5. *Bract.* fol. 443 b. See *Communi dividundo*.

DE COMON DROIT. L. Fr. Of common right, that is, by the common law. *Co. Litt.* 142 a. See *Common law*.

DE COMPUTO, *Breve*. L. Lat. Writ of account. A writ commanding a defendant to render a reasonable account to the plaintiff, or show cause to the contrary. *Reg. Orig.* 135—138. *F. N. B.* 117, E. The foundation of the modern action of account. See *Account*, *Computus*.

DE CONFLICTU LEGUM. Lat. Concerning the conflict of laws.

DE CONJUNCTIM FEOFFATIS. L. Lat. Concerning persons jointly enfeoffed, or seized. The title of the statute 34 Edward I., which was passed to prevent the delay occasioned by tenants in novel disseisin, and other writs, pleading that some one else was seized jointly with them. 2 *Reeves' Hist.* 243.

DE CONSANGUINEO, *Breve*. L. Lat. Writ of cosinage. *Reg. Orig.* 226. *F. N. B.* 221 K. See *Consanguineus*, *Cosin*, *Cosinage*.

DE CONSANGUINITATE, *Breve*. L.

Lat. Writ of cosinage. *Co. Litt.* 160 a. 1 *Reeves' Hist.* 363.

DE CONSILIO CURIÆ. L. Lat. By the advice or direction of the court. *Bract.* fol. 345 b.

DE CONSPIRATIONE, *Breve*. L. Lat. Writ of conspiracy. A writ which lay where two or more persons maliciously and covinously conspired to indict a person falsely, and afterwards he who was indicted was acquitted. *Reg. Orig.* 134. *F. N. B.* 114 D, 115 G. 2 *Reeves' Hist.* 328. 3 *Bl. Com.* 126. See *Conspiracy*.

DE CONSTITUTA PECUNIA. See *Actio de pecunia constituta*.

DE CONSUETUDINIBUS ET SERVITIIS, *Breve*. L. Lat. Writ of customs and services. A writ which lay for a lord against his tenant, who withheld from him, or deforced him of the rents and services due by custom or tenure for his land. *Reg. Orig.* 159. *F. N. B.* 151. *Bract.* fol. 83. 3 *Bl. Com.* 232. *Roscoe's Real Act.* 32. See *Customs*.

DE CONTINUANDO ASSISAM, *Breve*. L. Lat. Writ to continue an assise. *Reg. Orig.* 217 b.

DE CONTRIBUTIONE FACIENDA, *Breve*. L. Lat. Writ for making contribution. A writ founded on the statute of Marlbridge, (c. 9.,) to compel co-parceners, or tenants in common, to aid the eldest in performing the services due by them; or to make contribution, where the services had been already performed. *Reg. Orig.* 176 b. *F. N. B.* 162 B. C. 2 *Reeves' Hist.* 327. 3 *Id.* 55. *Crabb's Hist.* 212.

DE CONTUMACE CAPIENDO, *Breve*. L. Lat. Writ for taking a contumacious person. A writ which issues out of the English Court of Chancery, in cases where a person has been pronounced by an ecclesiastical court to be contumacious, and in contempt. *Shelford, Marr. & Div.* 494—496, and notes. It is a commitment for contempt. *Id.* 504, 505. 5 *Ad. & El. N. S.* 335.

DE CONVENTIONE, *Breve*. L. Lat. Writ of covenant. *Reg. Orig.* 165—167. *F. N. B.* 145. See *Covenant*.

DE COPIA LIBELLI DELIBERANDA, *Breve*. L. Lat. Writ for delivering the copy of a libel. An ancient writ di-

rected to the judge of a spiritual court, commanding him to *deliver* to a defendant a copy of the libel filed against him in such court. *Reg. Orig.* 58. The writ in the Register is directed to the Dean of Arches, and his commissary. *Id.* See *Copia*.

DE CORNES ET DE BOUCHE. L. Fr. With horns and with mouth or voice. Words used in describing the ancient hue and cry. *Britt.* c. 12.

DE CORONATORE ELIGENDO, *Breve*. L. Lat. Writ for electing a coroner. A writ issued to the sheriff in England, commanding him to proceed to the election of a coroner, which is done in full county court, (*in pleno comitatu*), the freeholders being the electors. *Reg. Orig.* 177. *Reg. Jud.* Appendix, 19. 1 *Bl. Com.* 347. 3 *Steph. Com.* 31. *Sewell's Law of Sheriff*, 372.

DE CORONATORE EXONERANDO, *Breve*. L. Lat. Writ for discharging or removing a coroner. A writ by which a coroner in England may be removed from office for some cause therein assigned. *F. N. B.* 163, 164. 1 *Bl. Com.* 348. *Sewell's Law of Sheriff*, 373.

DE CORPORE. Lat. Of the body. *Bract.* fol. 37 b. *De corpore suo*; from or of his own body. *Id.* fol. 22 b.

DE CORPORE COMITATUS. L. Lat. From the body of the county at large, as distinguished from a particular neighborhood, (*de vicineto*). 3 *Bl. Com.* 360.

DE CORPORE DELICTI. L. Lat. As to the *corpus delicti*, or substantial fact of a crime having been committed. *De corpore delicti constare oportebat*; i. e. *non tam fuisse aliquem in territorio isto mortuum inventum, quam vulneratum et cæsum. Potest enim homo etiam ex alia causa subito mori.* It ought to be clear as to the *corpus delicti*; i. e. not only that one was found dead in that neighborhood, but that he was wounded and slain. For a man may die suddenly from another cause. *Stiernhook de Jur. Gothor.* b. 3, c. 4. 3 *Bl. Com.* 348, note (t).

DE CORRODIO HABENDO, *Breve*. L. Lat. Writ for having a corody. A writ to exact a corody from a religious house. *Reg. Orig.* 264. *F. N. B.* 230. See *Corody*.

DE CURIA CLAUDENDA, *Breve*. L. Lat. Writ for closing a court. A writ, now disused, to compel a party to close or

enclose his court, (*curia*;) or land about his house, where it was left open to the nuisance of his neighbor's freehold, (*ad nocumentum liberi tenementi*.) *Reg. Orig.* 155. *F. N. B.* 127, G. 1 *Crabb's Real Prop.* 314, § 350. See *Curia*.

DE CURSU. L. Lat. Of course. *Reg. Orig.* 29 b, regula.

DE CUSTODIA TFRRÆ ET HÆREDIS, *Breve*. L. Lat. Writ of ward, or writ of right of ward. A writ which lay for a guardian in knight's service or in socage, to recover the possession and custody of the infant, or the *wardship of the land and heir*. *Reg. Orig.* 161 b. *F. N. B.* 139 B. 3 *Bl. Com.* 141.

DE CUSTODE ADMITTENDO, *Breve*. L. Lat. Writ for admitting a guardian. *Reg. Orig.* 93 b, 198.

DE CUSTODE AMOVENDO, *Breve*. L. Lat. Writ for removing a guardian. *Reg. Orig.* 198.

DE CY EN AVANT. L. Fr. From now henceforth. *Artic. Sup. Chart.* c. 1.

DE DEBITO, *Breve*. L. Lat. Writ of debt. *Reg. Orig.* 139. *F. N. B.* 119, C —121.

DE DEBITORE IN PARTES SECANDO. Lat. Of cutting a debtor in pieces. The title of a law in the Twelve Tables, the meaning of which has been differently interpreted; some writers contending for the literal signification, while others have supposed it to be only a figurative expression, denoting a division of the debtor's estate. The latter view has been adopted by Montesquieu, Bynkershoek, Heineccius and Taylor. *Espit des Lois*, liv. 29, c. 2. *Bynk. Obs. Jur. Rom.* l. 1, c. 1. *Heinecc. Ant. Rom.* lib. 3, tit. 30, § 4. *Tayl. Comment. in Leg. Decemv.* The literal meaning, on the other hand, is advocated by Aulus Gellius and other writers of antiquity, and receives support from an expression (*semoto omni cruciatu*) in the Roman code itself. *Aul. Gel. Noctes Atticæ*, lib. 20, c. 1. *Code*, 7. 7. 8. This is also the opinion of Gibbon, Gravina, Pothier, Hugo and Niebuhr. *Gibbon's Rom. Emp.* vol. 3, p. 183, (Am. ed.) *Gravina de Jur. Nat. Gent. et XII. Tab. sec.* 72. *Pothier, Introd. Pand. Hugo Hist. du Droit Rom.* tom. i., p. 233, sec. 149. *Niebuhr. Hist. Rom.* vol. ii. p. 597. 1 *Kent's Com.* 523, note.

DE DECEPTIONE, *Breve*. L. Lat. Writ of deceit, or disceit. A writ which properly lay where one did any thing in the name of another by which the other was damnified and deceived. *Reg. Orig.* 112. *F. N. B.* 95, E. *Reg. Jud.* 9 b, 10.

DE DIE IN DIEM. L. Lat. From day to day. *Bract.* fol. 205 b.

DE DOLO MALO. Lat. Of, or founded upon fraud. See *Actio de dolo malo*.

DE DOMO REPARANDA, *Breve*. L. Lat. Writ for repairing a house. A writ which anciently lay to compel a man to repair his house, when it threatened to fall (*minatur ruinam*) to the nuisance of another's freehold, &c. *Reg. Orig.* 153 b.

DE DONIS CONDITIONALIBUS. L. Lat. Concerning conditional gifts. The title of the first chapter of the statute of Westminster 2, (13 Edw. I.) commonly called the *Statute De Donis*, by which fees simple conditional were converted into fees tail. 2 *Reeves' Hist. Eng. Law*, 164, 165; where its contents are given. 2 *Bl. Com.* 112. 1 *Steph. Com.* 228. 4 *Kent's Com.* 12, 13. *Burton's Real Prop.* 201, ch. ii. *Lewis on Perpetuity*, 27. See *Conditional fee*, *Fee tail*.

DE DOTE ASSIGNANDA, *Breve*. L. Lat. Writ for assigning dower. A writ which lay for the widow of a tenant *in capite*, commanding the king's escheator to cause her dower to be assigned to her. *Reg. Orig.* 297. *F. N. B.* 263, C.

DE DOTE UNDE NIL HABET, *Breve*. L. Lat. Writ of dower, whereof she has nothing. A writ, now much disused, which lies for a widow entitled to dower of her husband's land, *where no part of it* has been assigned her, commanding the tenant, or person deforcing her, to assign her reasonable dower. *Reg. Orig.* 170. *F. N. B.* 147, E. 148, A. This is a writ of right in its nature. *Roscoe's Real Act.* 39. It must be brought by the widow as demandant, against the tenant of the freehold, that is, the heir or his alienee, and its effect is to enable the former to recover from the latter the seisin of a third part of the tenements in demand, to be set forth to her in severalty by metes and bounds, together with damages and costs. 3 *Steph. Com.* 494.

DE DROIT. L. Fr. [L. Lat. *de jure*.] Of right. *Britt.* c. 107.



**DE EJECTIONE CUSTODIÆ, Breve.** L. Lat. [L. Fr. *ejectment de gard.*] Writ of ejectment of ward. A writ which lay where a guardian had been forcibly ejected from his wardship. *Reg. Orig.* 162.

**DE EJECTIONE FIRMAE, Breve.** L. Lat. Writ of ejectment or ejection of farm. A writ which lay where lands or tenements were let for a term of years, (*firma*, firm or farm,) and afterwards the lessor, reversioner, remainderman or any stranger ejected or ousted the lessee of his term. It was originally merely a writ of trespass for the recovery of damages for such ejection, but was afterwards used as a remedy for the recovery of the term itself, and became in this way the foundation of the modern action of *ejectment*. *Reg. Orig.* 227 b. *F. N. B.* 220. 3 *Bl. Com.* 199—201. *Bract.* fol. 220. *Crabb's Hist.* 290. *Roscoe's Real Act.* 481. See *Ejectment, Firma*.

**DE ESCÆTA, Breve.** L. Lat. Writ of escheat. A writ which a lord had, where his tenant died without heir, to recover the land. *Reg. Orig.* 164 b. *F. N. B.* 143, 144, E.

**DE ESCAMBIO MONETÆ, Breve.** L. Lat. A writ of exchange of money. An ancient writ to authorize a merchant to make a bill of exchange (*litteras cambitorias facere*). *Reg. Orig.* 194.

**DE ESSE IN PEREGRINATIONE.** L. Lat. Of being on a journey. A species of *essoin*. 1 *Reeves' Hist.* 119.

**DE ESSENDO QUIETUM DE THEOLONIO, Breve.** L. Lat. Writ of being quit of toll. A writ which lay for citizens and burgesses of any city or borough [and other persons] who by charter or prescription were exempted from toll, [to enforce such exemption.] *Reg. Orig.* 258 b—261. *F. N. B.* 226, I.

**DE ESSONIO DE MALO LECTI, Breve.** L. Lat. Writ of *essoin* of *malum lecti*. A writ which issued upon an *essoin* of *malum lecti* being cast, to examine whether the party was in fact sick, or not. *Reg. Orig.* 8 b. See *De malo lecti*.

**DE ESTOVERIIS HABENDIS, Breve.** L. Lat. Writ for having *estovers*. A writ which lay for a wife divorced *a mensa et thoro*, to recover her alimony or *estovers*. 1 *Bl. Com.* 441. 1 *Lev.* 6.

**DE ESTREPAMENTO, Breve.** L. Lat. Writ of *estrepement*. A writ to prevent or stop the commission of waste in lands by a tenant, during the pendency of a suit against him for their recovery.\* *Reg. Orig.* 76 b. *F. N. B.* 60. 3 *Bl. Com.* 225, 226. Abolished by statute 3 & 4 Will. IV. c. 27. See *Estrepement*.

**DE ET SUPER PRÆMISSIS.** L. Lat. Of and upon the premises. *Cro. Car.* 216, 217.

**DE EXCOMMUNICATO CAPIENDO, Breve.** L. Lat. Writ for taking an excommunicated person. A writ by which the sheriff was commanded to take an excommunicated person, and imprison him in the county gaol, until he was reconciled to the church. *Reg. Orig.* 65. 3 *Bl. Com.* 102. Otherwise called, from its initial word, a *significavit*. *Id.* Now superseded by the writ *de contumace capiendo*. *Stat.* 53 Geo. III. c. 127. *Shelford Marr. & Div.* 494—496 and notes.

**DE EXCOMMUNICATO DELIBERANDO, Breve.** L. Lat. Writ for delivering an excommunicated person from prison, where he had made satisfaction to the church.\* *Reg. Orig.* 65 b. *F. N. B.* 63 a. 3 *Bl. Com.* 102.

**DE EXCOMMUNICATO RECAPIENDO, Breve.** L. Lat. Writ for retaking an excommunicated person, where he had been liberated from prison without making satisfaction to the church, or giving security for that purpose. *Reg. Orig.* 67.

**DE EXECUTIONE FACIENDA IN WITHERNAMIO, Breve.** L. Lat. Writ for making execution in *withernam*. *Reg. Orig.* 82 b. A species of *capias in withernam*.

**DE EXECUTIONE JUDICII, Breve.** L. Lat. Writ of execution of judgment. A writ directed to a sheriff or bailiff, commanding him to do execution upon a judgment. *Reg. Orig.* 18. *F. N. B.* 20. 8 *Reeves' Hist. E. Law*, 56.

**DE EXEMPLIFICATIONE, Breve.** L. Lat. Writ of exemplification. A writ granted for the exemplification of an original. *Reg. Orig.* 290 b.

**DE EXONERATIONE SECTÆ, Breve.** L. Lat. Writ for exoneration of suit. A writ that lay for the king's ward to be discharged of all suit to the county court,

hundred, leet, or court baron, during the time of his wardship. *F. N. B.* 158. *New N. B.* 352.

**DE EXPENSIS MILITUM LEVANDIS**, *Breve*. L. Lat. Writ for levying the expenses of knights. A writ directed to the sheriff for levying the allowance for knights of the shire in parliament. *Reg. Orig.* 191 b, 192.

**DE EXPENSIS MILITUM NON LEVANDIS**, *Breve*. L. Lat. Writ to abstain from levying the expenses of knights. A writ prohibiting the sheriff from levying any allowance for knights of the shire upon those that held in ancient demesne, and others. *Reg. Orig.* 261.

**DE FACTO**. L. Lat. [*L. Fr. de fait.*] Of fact; from, arising out of, or founded on fact; in fact; in deed; in point of fact; actually, really. An ancient phrase still constantly used in law, in contradistinction to *de jure*, (of, or founded on right; by right;) and most commonly applied to persons whose titles or claims rest upon *mere fact*, without any reference to *right*, or in actual opposition to right or law. Thus, a king *de facto* is a king in possession, without any respect to his title; an usurper being thus distinguished from a king *de jure*, or rightful heir of the crown, who has never had plenary possession of the throne. 4 *Bl. Com.* 77, 78. 1 *Id.* 204. So, any public officer, who acts under color of office, by an election or appointment not strictly legal, or without having duly qualified himself, or by holding over after the expiration of his term, is called an officer *de facto*, as distinguished from the rightful claimant.\* 2 *Stra.* 1090, 1091. 2 *Kent's Com.* 295, and note. 5 *Wendell's R.* 231. 1 *Gilman's (Ill.) R.* 529. So, a wife *de facto*, whose marriage is voidable by decree, is distinguished from a wife *de jure*, or lawful wife. 4 *Kent's Com.* 36. This last application is of great antiquity. *Uxor de jure—uxores de facto*. *Bract.* fol. 303. *Femme de droit—femmes de fait et a tort*. *Britt.* c. 107. *Bracton* applies it to convictions for felony, and to titles to land; using it in the latter sense as synonymous with *ex facto*, (q. v.) *Bract.* fol. 30 b, 172, 172 b.

**DE FAIT**. L. Fr. Of, or in fact; by wrong, as distinguished from *de droit*, of or by right. *Britt.* c. 107. See *De facto*.

**DE FALSO JUDICIO**, *Breve*. L. Lat. Writ of false judgment. *Reg. Orig.* 15. *F. N. B.* 18. See *False judgment*.

**DE FALSO MONETA**. L. Lat. Of false money. The title of the statute 27 Edward I., ordaining that persons importing certain coins, called pollards, and crokards, should forfeit their lives and goods, and every thing they could forfeit. 2 *Reeves' Hist.* 228, 229.

**DE FEODO**. L. Lat. Of fee; in fee. See *In feodo*, *In dominico suo ut de feodo*.

This phrase is applied in the statute of Westminster 2, to officers. *Marescallus de feodo*; marshal of fee. C. 42. *Qui officium habeant de feodo*; who have their offices in fee. Lord Coke observes that these words are not only meant of those who have a fee simple in their offices, but such as have any fixed estate, either in tail or for life. 2 *Inst.* 462, 463. According to some, it meant such officers as had fees due and belonging to them. *Id. ibid.*

**De fide et officio judicis non recipitur questio, sed de scientia, sive sit error juris, sive facti**. Concerning the fidelity and official conduct of a judge no question is [will be] entertained; but [only] concerning his knowledge, whether the error [committed] be of law or of fact. *Bacon's Max.* 68, reg. 17. The law doth so much respect the certainty of judgments, and the credit and authority of judges, that it will not permit any error to be assigned which impeacheth them in their *trust* and *office*, and in wilful abuse of the same; but only in ignorance and mistaking either of the law or of the case and matter of fact. *Id. ibid.* Thus, it cannot be assigned for error that a judge did that which he ought not to do; as that he entered a verdict for the plaintiff, where the jury gave it for the defendant. *F. N. B.* 20, 21. *Bacon's Max. ub. sup.* *Broom's Max.* 40.

**DE FIDEI LÆSIONE**. Lat. Of breach of faith or fidelity. 4 *Reeves' Hist.* 99. See *Pro læsione fidei*.

**DE FINE CAPIENDO PRO TERRIS**, *Breve*. L. Lat. A writ which lay for a juror who had been attainted for giving a false verdict, to obtain the release of his person, lands and goods on payment of a certain fine to the king. *Reg. Orig.* 232. See *Attaint*.

**DE FINE NON CAPIENDO PRO PULCHRE PLACITANDO**, *Breve*. L. Lat. A writ prohibiting the taking of fines for beau pleader. *Reg. Orig.* 179. See *Beau pleader*.

**DE FINE PRO REDISSEISINA CAPIENDO, Breve.** L. Lat. A writ which lay for the release of one imprisoned for a re-disseisin, on payment of a reasonable fine. *Reg. Orig.* 222 b.

**DE FINIBUS LEVATIS.** L. Lat. Concerning fines levied. The title of the statute 27 Edward I., requiring fines thereafter to be levied, to be read openly and solemnly in court. 2 *Inst.* 521.

**DE FORISFACTURA MARITAGII, Breve.** L. Lat. Writ of forfeiture of marriage. *Reg. Orig.* 163, 164.

**DE FRANGENTIBUS PRISONAM.** Lat. Concerning those that break prison. The title of the statute 1 Edward II., ordaining that none from thenceforth who broke prison should have judgment of life or limb for breaking prison only, unless the cause for which he was taken and imprisoned required such a judgment if he was lawfully convicted thereof. 2 *Reeves' Hist.* 290. 2 *Inst.* 589.

**DE FURTO.** Lat. Of theft. One of the kinds of criminal appeal formerly in use in England. 2 *Reeves' Hist.* 40. See *Appeal*.

**DE GESTU ET FAMA.** L. Lat. Of behaviour and reputation. An old writ which lay in cases where a person's conduct and reputation were impeached. *Lamb. Eiren.* lib. 4, c. 14.

**DE GRATIA SPECIALI, EX CERTA SCIENTIA, ET MERO MOTU.** L. Lat. Of special grace, certain knowledge and mere motion. Formal words used in royal grants and patents; *de gratia speciali*, showing the favor and bounty of the sovereign to the patentee; *ex certa scientia*, implying a full knowledge and understanding of the matter; and *ex mero motu*, testifying that there was not any suit nor suggestion of the patentee, but that the first motion, and all that followed from it to the perfection of the patent, proceeded from the sovereign himself. *Plowd.* 330. 1 *Co.* 51 b. 2 *Bl. Com.* 347.

**DE HÆREDE RAPTO ET ABDUCTO, Breve.** L. Lat. Writ concerning an heir ravished and carried away. A writ which anciently lay for a lord who having by right the wardship of his tenant under age, could not obtain his body, the same being carried away by another person. *Reg. Orig.* 163. *O. N. B.* 93.

**DE HÆREDE DELIBERANDO ILLI QUI HABET CUSTODIAM TERRÆ, Breve.** L. Lat. Writ for delivering an heir to him who has wardship of the land. A writ directed to the sheriff, to require one that had the body of him that was ward to another, to deliver him to the person whose ward he was by reason of his land. *Reg. Orig.* 161.

**DE HÆRETICO COMBURENDO, Breve.** L. Lat. Writ for burning a heretic. A writ which lay against a heretic who having been convicted of heresy by the bishop, and abjured it, afterwards fell into the same again, or some other, and was thereupon delivered over to the secular power. *F. N. B.* 269, B. This writ has been said to be as ancient as the common law itself. 1 *Hale's P. C.* 392. 4 *Bl. Com.* 46. It was abolished by statute 29 *Car.* II. c. 9. *Id.* 49. 3 *Steph. Com.* 99, 101.

**DE HOMAGIO RESPECTUANDO, Breve.** L. Lat. Writ for respiting or postponing homage. *F. N. B.* 269, A.

**DE HOMINE CAPTO [CAPIENDO] IN WITHERNAM, Breve.** L. Lat. Writ for taking a man in withernam. A writ that anciently lay to take in withernam him that had taken any bondman or woman, and led him or her out of the county, so that he or she could not be replevied according to law. *Reg. Orig.* 79, 80. A species of *capias in withernam*. 3 *Bl. Com.* 129. See *Withernam*.

**DE HOMINE REPLEGIANDO, Breve.** L. Lat. Writ for replevying a man. A writ to replevy a man out of prison, or out of the custody of any private person, upon giving security to the sheriff that the man shall be forthcoming to answer any charge against him. *Reg. Orig.* 77 b, 78. *F. N. B.* 66. E. 3 *Bl. Com.* 129. 3 *Reeves' Hist.* 83. This writ, though obsolete in England, is still in use in some of the United States. In New-York it is allowed to one who is claimed by another as a fugitive from another state, and bound to serve him, notwithstanding a *habeas corpus* may have been previously issued or served. 2 *Rev. St.* [561,] 464, § 15.

**DE IDEMPTITATE (or IDENTITATE) NOMINIS, Breve.** L. Lat. A writ respecting identity of name. A writ which anciently lay for one who was taken and arrested in any personal action, and committed to prison for another of the same name. *Reg. Orig.* 194—196. *Reg. Jud.* 17. *F. N. B.* 267, E. 268.

**DE IDIOTA INQUIRENDO, Breve.** L. Lat. A writ to inquire whether a man be an idiot or not. *Reg. Orig.* 266. *F. N. B.* 232 A. 1 *Bl. Com.* 303.

**DE IIS QUI PONENDI SUNT IN ASSISIS.** L. Lat. Of those who are to be put on assises. The title of a statute passed 21 Edward I., defining the qualifications of jurors. *Crabb's Hist. Eng. Law*, 167, 189. 2 *Reeves' Hist.* 184.

**DE IN REM VERSO.** See *Actio de in rem verso*.

**DE INCREMENTO.** L. Lat. Of increase; in addition. Costs *de incremento*, or costs of increase, are the costs adjudged by the court in civil actions, *in addition* to the damages and nominal costs found by the jury. *Gilb. C. Pleas*, 260.

**DE INFIRMITATE.** Lat. Of infirmity. The principal essoin in the time of Glanville; afterwards called *de malo*. 1 *Reeves' Hist.* 115. See *De Malo, Essoin*.

**DE INGRESSU, Breve.** L. Lat. Writ of entry. *Bract.* fol. 318, 319. *Reg. Orig.* 227 b.—231, 235—237. *Cowell, voc. Ingressu.* See *Entry*.

**DE INJURIA.** See *infra*.

**DE INJURIA SUA PROPRIA, ABSQUE TALI CAUSA.** L. Lat. [L. Fr. *de son tort demesne sans tiel cause.*] Of his own wrong, without such cause. Formal words of traverse, used in replications in actions of trespass, and more compendiously called the traverse *de injuria*. Where the defendant, in an action of trespass for assault and battery, pleads *son assault demesne* (that the plaintiff first made an assault upon him, and that he acted in self-defence,) the plaintiff may reply that he committed the trespass *of his own wrong*, and *without such cause* or excuse as he alleges. This kind of traverse always tenders issue, but differs from the common form of a traverse by denying in general and summary terms, and not in the words of the allegation traversed. *Steph. Pl.* 163. *Crogate's case*, 8 Co. 66. 1 *Smith's Lead. Cas.* 53, 55. 1 *Chitt. Pl.* 605—611. It is in general proper where the plea consists of matter of excuse only, and its effect is to put the whole plea in issue, and compel the defendant to prove it. 1 *Archb. N. Prius*, 148, 387.

Where a part of the plea is admitted, the foregoing replication is termed *de injuria absque residuo causa*. 1 *Chitt. Pl.* 606.

**DE INOFFICIOSO TESTAMENTO.** Lat. Concerning an inofficious, or undutiful will. A title of the civil law. *Inst.* 2. 18. See *Inofficiosum*.

**DE INTRUSIONE, Breve.** L. Lat. Writ of intrusion. A writ which lay for a reversioner, where tenant for life, or in dower, or by the curtesy, died seised of such estate for life, and after their death a stranger intruded upon the land. *Reg. Orig.* 233 b. *F. N. B.* 203 E.

**DE JACTIS IN MARE LEVANDÆ NAVIS CAUSA.** Lat. Concerning things thrown into the sea, for the purpose of lightening a ship. A title of the civil law. *Inst.* 2. 1. 47.

**DE JUDAISMO.** Lat. Concerning Judaism. The title of a statute passed 18 Edw. I. prohibiting usury. *Crabb's Hist. Eng. Law*, 167. See *Judaismus*.

**DE JUDICIO SISTI.** L. Lat. For appearing in court. A term applied in the Scotch law to bail for a defendant's appearance.

**DE JUDICATO SOLVENDO.** L. Lat. For payment of the amount adjudged. A term applied in the Scotch law to bail to the action, or special bail. See *Special bail, Judicatum solvere*.

**DE JURE.** Lat. Of right; by right; growing out of right; rightfully. 4 *Bl. Com.* 77. *Magna Charta*, c. 15. *Bract.* fol. 45. Usually opposed to *de facto*, (q. v.)

**DE LA PLUIS BEALE (or BELLE.)** L. Fr. Of the most fair. A term applied to a species of dower, which was assigned out of the fairest of the husband's tenements. *Litt.* sect. 48. This was abolished with the military tenures. 2 *Bl. Com.* 132. 1 *Steph. Com.* 252.

**DE LEGE RHODIA DE JACTU.** Lat. Of the Rhodian law of jettison. A title of the Pandects, in which the Rhodian law of jettison is adopted. *Dig.* 14. 2. 1. 3 *Kent's Com.* 233.

**DE LEPROSO AMOVENDO, Breve.** L. Lat. Writ for removing a leper. A writ to remove a leper who thrust himself into the company of his neighbors in any parish, in public or private places, to their annoyance. *Reg. Orig.* 267. *F. N. B.* 234 E. *New N. B.* 521.

**DE LIBERA FALDA, Breve.** L. Lat.

Writ of free fold. A species of *Quod permittat*. *Reg. Orig.* 155.

DE LIBERA PISCARIA, *Breve*. L. Lat. Writ of free fishery. A species of *quod permittat*. *Reg. Orig.* 155.

DE LIBERO PASSAGIO, *Breve*. L. Lat. Writ of free passage. A species of *quod permittat*. *Reg. Orig.* 155.

DE LIBERATE ALLOCANDA, *Breve*. See *Liberate*.

DE LIBERTATE PROBANDA, *Breve*. L. Lat. Writ for proving liberty. A writ which lay for such as, being demanded for villeins or niefs, offered to prove themselves free. *Reg. Orig.* 87 b. *F. N. B.* 77. F.

DE LIBERTATIBUS ALLOCANDIS, *Breve*. L. Lat. Writ for allowing liberties. A writ which lay for a citizen or burgess entitled to certain liberties, to have them allowed him. *Reg. Orig.* 262. There were various writs of this kind. *Id.* 263 b. *F. N. B.* 229.

DE LIBERTATIBUS PERQUIRENDIS, *Ordinatio*. L. Lat. The title of a statute passed 27 Edward I. st. 2. *Crabb's Hist. Eng. Law*, 167.

DE LICENTIA TRANSFRETANDI, *Breve*. L. Lat. Writ of permission to cross the sea. An old writ directed to the wardens of the port of Dover, or other sea port in England, commanding them to permit the persons named in the writ to cross the sea from such port, on certain conditions. *Reg. Orig.* 193 b.

DE LUNATICO INQUIRENDO. L. Lat. For inquiring about a lunatic or lunacy. The name of a commission, in the nature of a writ, issued in cases of alleged lunacy, to inquire whether the party be a lunatic or not; otherwise called a commission of lunacy. *Stock on Non Compotes Mentis*, 86—92. *Reg. Jud. Appendix*, 19. 2 *Steph. Com.* 531. See *Commission of Lunacy*.

DE MAGNA ASSISA ELIGENDA, *Breve*. L. Lat. Writ of, or for choosing the grand assise. A writ directed to the sheriff to summon four lawful knights, before the justices of assise, there, upon their oaths, to choose twelve knights of the vicinage to be joined with them; which sixteen knights constituted the grand assise, or great jury, which was to try the matter of

right in a writ of right. *Reg. Orig.* 8. *F. N. B.* 4 F. 3 *Bl. Com.* 351. Abolished by statute 3 & 4 Will. IV., c. 27. See *Grand assise*.

DE MALE FAME. L. Fr. Of bad reputation. *Stat. Westm.* 1, c. 12.

DE MALO LECTI. L. Lat. [L. Fr. *de mal de lyt.*] Of infirmity or illness of [in] bed. A species of essoin or excuse for non appearance in court, formerly allowed a defendant in England, and more anciently called *de infirmitate de reseantisa*; the excuse being that the defendant was confined to his house in bed (*lectus*) by infirmity or indisposition, (*malum*.) *Glanv. lib.* 1, c. 18, 19. *Bract. fol.* 337, 344 b. *Britt. c.* 122, 123. 1 *Reeves' Hist. Eng. Law*, 115, 412. See *Malum lecti*. This essoin commonly followed immediately upon that *de malo veniendi* (*infra*); for where a person having been detained on the road by sickness, and having cast the essoin *de malo veniendi* had found himself obliged to return home, the order of essoins, conformably with what was likely to be the real fact, led to the essoin *de malo lecti*. 1 *Reeves' Hist.* 412. *Bract. fol.* 344 b.

DE MALO VENIENDI. L. Lat. [L. Fr. *de mal de venue.*] Of infirmity or misfortune in coming. A species of essoin or excuse for non-appearance in court, formerly allowed a defendant in England, and more anciently called the essoin *de infirmitate veniendi*; the excuse being that while on the way (*in veniendo*, or *in itinere*), from his house to the court, such an infirmity befell him, (*talis infirmitas ei devenit*, or *ita infirmatus fuerit*), that he could not attend. *Bract. fol.* 337, 338. *Britt. c.* 122, 123, 125. 1 *Reeves' Hist.* 115, 406. According to Spelman, (who gives it also the name of *malum viæ*), it lay where the party either could not attend on account of actual impossibility, or dared not on account of apprehended danger, or could not reach court in season on account of the length of the journey. *Spelman, voc. Easoniare*. It was called the common essoin. *Id.* *Bract. fol.* 337, 337 b. See *Malum viæ*.

DE MALO VILLÆ. L. Lat. Of illness in a town. A species of essoin, where a party had appeared in court, but was afterwards, before any answer to the suit, taken ill in the town where the court sat, and was unable to attend. *Bract. fol.* 363 b. 1 *Reeves' Hist.* 417. This is not mentioned by Spelman, and Bracton calls it anomalous. *Bract. ub. sup.*

**DE MANUCAPTIONE, Breve.** L. Lat. Writ of manucaption, or mainprise. A writ which lay for one who, being taken and imprisoned on a charge of felony, had offered bail, which had been refused; requiring the sheriff to discharge him on his finding sufficient mainpernors or bail. *Reg. Orig.* 268 b. *F. N. B.* 249 G.

**DE MANUTENENDO, Breve.** L. Lat. Writ of maintenance. A writ which lay against a person for the offence of maintenance. *Reg. Orig.* 189, 182 b.

**DE MEDIETATE LINGUÆ.** L. Lat. Of half tongue; i. e. half of one tongue or language, and half of another. A term applied to that particular description of jury in England, where one-half consisted of denizens or natives, and the other half of aliens, and which was allowed both in civil and criminal actions where one of the parties was an alien. *Staundf. Pl. Cor. lib.* 3, c. 7. 3 *Bl. Com.* 360. 4 *Id.* 352. See *Bilinguis, Half tongue*. It was first introduced in favor of foreign merchants, by the statute of the staple, 27 Edw. III. st. 2, c. 8, and was extended to criminal cases by stat. 28 Edw. III. c. 13. 2 *Reeves' Hist.* 395, 461. It is still allowed in trials for felony or misdemeanour, but no longer in a civil action. *Stat. 6 Geo. IV. c. 50, ss. 3, 47.* 3 *Steph. Com.* 596, note. 4 *Id.* 422. It was formerly in use in the state of New-York, but is now abolished, as it generally is throughout the United States. 2 *Johns. R.* 381. 1 *N. Y. R. L.* (1813), 334, § 24. 2 *N. Y. Rev. St.* [419], 339, § 53. *Id.* [734], 614, § 7. 6 *Dane's Abr.* c. 182.

**DE MEDIO, Breve.** L. Lat. Writ of mesne. A writ in the nature of a writ of right, which lay for an undertenant against the mesne or middle lord, where, upon a subinfeudation, the mesne, or middle lord, suffered his undertenant, or tenant paravail, to be distrained upon by the lord paramount for the rent due to him from the mesne lord. 3 *Bl. Com.* 234. *Co. Litt.* 100 a. *Reg. Orig.* 160. *F. N. B.* 135, M. N. *Bruct.* fol. 21 b. *Roscoe's Real Act.* 38. See *Mesne, Paramount, Paravail*.

**DE MELIORIBUS DAMNIS.** L. Lat. Of, or for the better damages. A term used in practice to denote the election by a plaintiff against which of several defendants (where the damages have been assessed separately,) he will take judgment. 1 *Arch. Pr.* 219. 8 *Cowen's R.* 111.

**DE MERCATORIBUS.** Lat. Of mer-

chants. The title of a statute passed in the 13th year of Edward I., by which all the lands of a debtor, where the debt was contracted in trade, might be delivered to the creditor to hold in pledge until the debt was levied, when the land was to be restored. *Stat. de Merc.* 13 Edw. I. st. 3. 2 *Bl. Com.* 161. The recognizance introduced by this statute was called a statute merchant. *Id.* 160. 2 *Reeves' Hist.* 160—162.

**DE MILITIBUS.** Lat. Of, or concerning knights. The title of a statute passed in the 1st year of Edward II., the object of which was to abate that part of the feudal system, which required every one possessed of a knight's fee (*feudum militare*), to take upon him the order of knighthood, (*suscipere arma militaria*.) *Crabb's Hist.* 201, 2. 2 *Reeves' Hist.* 288. 2 *Inst.* 593. This is said to have been not properly a legislative act, but a writ granted by the king in time of parliament, and entered by his direction on the record. *Id. ibid.*

**De minimis non curat lex.** The law does not care for, or take notice of trifling matters. Thus, error in calculation of a fractional part of a penny will not be regarded. *Hob.* 88. *Cro. Eliz.* 353. So, the law will not, in general, notice the fraction of a day. *Broom's Max.* 333. See *Id.* 156. Nor the imperceptible gain of land from the sea by alluvion. 2 *Bl. Com.* 262. But this maxim is never applied to cases of positive and wrongful invasion of right, however trifling may be the injury actually sustained. See 5 *Hill's (N. Y.) R.* 170.

**DE MINIS, Breve.** Lat. Writ of threats. A writ which lay where a person was threatened with personal violence, or the destruction of his property, to compel the offender to keep the peace. *Reg. Orig.* 88 b, 89. *F. N. B.* 79 G. 80.

**DE MITTENDO TENOREM RECORDI, &c., Breve.** L. Lat. Writ to send the tenor of a record, or to exemplify it under the great seal. *Reg. Orig.* 220 b.

**DE MODERATA MISERICORDIA CAPIENDA, Breve.** Writ for taking a moderate amercement. A writ, founded on Magna Charta, (c. 14.) which lay for one who was excessively amerced in a court not of record, directed to the lord of the court, or his bailiff, commanding him to take a moderate amercement of the party. *Reg. Orig.* 86 b. *F. N. B.* 75, 76.

**DE MODO DECIMANDI.** L. Lat. Of a modus of tithing. A term applied in English ecclesiastical law, to a prescription to have a special manner of tithing. 2 *Bl. Com.* 29. 3 *Steph. Com.* 130.

**DE MONETA.** L. Lat. Concerning money. The title of three statutes passed in the 20th year of Edward I., viz: the statute *De moneta*, 20 Edw. I. st. 4; the statute *De moneta, parvum*, 20 Edw. I. st. 5, and the *Articuli de moneta*, 20 Edw. I. st. 6. These were particularly directed against the importation of clipped and counterfeit money. 2 *Reeves' Hist.* 228.

**De morte hominis nulla est cunctatio longa.** Where the death of a human being is concerned, [in a matter of life and death,] no delay is [considered] long. *Co. Litt.* 134.

**DE MOT EN MOT.** L. Fr. From word to word; word for word. *Britt.* c. 22.

**DE NATIVO HABENDO,** *Breve.* L. Lat. [L. Fr. *briefe de naifte.*] Writ for having one's villein. A writ which lay for a lord whose villein had fled from him (*fugitivo*) directed to the sheriff, commanding him to apprehend the villein, and restore him, with all his chattels to the lord. *Reg. Orig.* 87. *F. N. B.* 77. *Roscoe's Real Act.* 35.

**DE NAUTICO FOENORE.** Lat. Of maritime interest. A title of the civil law. *Dig.* 22. 2. *Cod.* 4. 33. 3 *Kent's Com.* 354 note.

**De non apparentibus et non existentibus eodem est ratio.** See *Apparens, Apparere.*

**DE NON DECIMANDO.** L. Lat. Of not paying tithes. A term applied in English ecclesiastical law to a prescription or claim to be entirely discharged of tithes, and to pay no compensation in lieu of them. 2 *Bl. Com.* 31.

**DE NON PROCEDENDO AD ASSISAM,** *Breve.* Writ for not proceeding to take an assise. A writ, directed to the justices assigned to hold assises, commanding them not to proceed to take an assise in a particular case. *Reg. Orig.* 221.

**DE NON SANE MEMORIE.** L. Fr. Of unsound memory or mind; a phrase synonymous with *non compos mentis*. *Litt.* sect. 405. *Plowd.* 368. *Stock on Non Compos Mentis*, 1. See *Memory, Non Compos Mentis*.

**DE NOVI OPERIS NUNCIATIONE.** Lat. Concerning the prohibition of a new work. A title of the civil law. *Dig.* 30. 1. See *Nuntiatio*.

**DE NOVO.** Lat. [L. Fr. *de novel.*] Anew; (of new,) a second time.

**DE ODIS ET ATIA,** *Breve.* L. Lat. Writ of hatred and malice. A writ which anciently lay for a person committed to prison on a charge of homicide, and who otherwise could not be bailed. It was directed to the sheriff, commanding him to make inquiry by the oaths of lawful men, whether the party in prison was charged through malice, (*utrum reitatus de odio et atia*,) or upon just cause of suspicion. If it was found that he was accused *odio et atia*, and that he was not guilty; or if he committed the deed *se defendendo*, or *per infortunium*, then a writ of *tradas in ballium* might issue, commanding the sheriff, if the prisoner could find twelve good and lawful men of the county, who would be mainperners for him, then he should deliver him to them in bail. *Reg. Orig.* 133 b. *Bract.* fol. 123. 3 *Bl. Com.* 128. 1 *Reeves' Hist. Eng. Law*, 252. 2 *Id.* 14. *Crabb's Hist.* 148. *Mag. Chart.* c. 26. *Stat. Westm.* 2, c. 29. This writ was one of the great securities of personal liberty in England, resembling in its objects the writ of *habeas corpus*, by which it is now superseded. 1 *Reeves' Hist.* 252. It is first mentioned by name in *Magna Charta*, (as *breve inquisitionis*,) which ordained that it should issue in future gratis, and should never be denied; but Mr. Crabb supposes it was not introduced by statute, but existed at common law. *Crabb's Hist.* 148. It was abolished by statute 28 Edw. III. c. 9. But Lord Coke considered it to have been revived by the stat. 42 Edw. III. c. 1. 3 *Bl. Com.* 129. See *Atia*.

**DE OFFICIO CORONATORIS.** L. Lat. Concerning the office of coroner. The title of the statute 4 Edward I., enumerating the duties of the office of coroner. 2 *Reeves' Hist.* 140.

**DE ONERANDO PRO RATA PORTIONE,** *Breve.* L. Lat. Writ for charging according to a rateable proportion. A writ which lay for a joint tenant, or tenant in common, who was distrained for more rent than his proportion of the land came to. *Reg. Orig.* 182. *F. N. B.* 234, H. This writ is called by Fitzherbert, *De deonerando pro rata portione*, and in the Register, *De onerando secundum ratum portionis*.

**DE PACE ET LEGALITATE TUEN-DA.** L. Lat. For keeping the peace, and for good behaviour. *Tradat fidejussores de pace et legalitate tuenda*; he shall deliver or find sureties for keeping the peace and good behaviour. *LL. Edw. Conf. c. 18. 4 Bl. Com. 252, 254. Spelman, voc. Legalitas.* See *Legalitas*.

**DE PACE ET PLAGIS.** L. Lat. Of peace [breach of peace] and wounds. One of the kinds of criminal appeal formerly in use in England, and which lay in cases of assault, wounding and breach of the peace. *Bract. fol. 144. 2 Reeves' Hist. 33.* See *Appeal*.

**DE PACE ET ROBERIA.** L. Lat. Of peace [breach of peace] and robbery. One of the kinds of criminal appeal formerly in use in England, and which lay in cases of robbery and breach of the peace. *Bract. fol. 146. 2 Reeves' Hist. 37.* See *Appeal*.

**DE PACE ET IMPRISONAMENTO.** L. Lat. Of [breach of] peace and imprisonment. The title of an appeal formerly in use in England in cases of imprisonment and breach of the peace. *Bract. fol. 145 b. 2 Reeves' Hist. 35.* See *Appeal*.

**DE PACE INFRACTO.** L. Lat. Of peace broken; of breach of the peace.

**DE PARCO FRACTO, Breve.** L. Lat. Writ of pound breach. A writ which lay against him who violently broke a pound, and took out beasts from thence, which were lawfully impounded. *Reg. Orig. 116 b. F. N. B. 100, E. F. Co. Litt. 47 b. 3 Bl. Com. 146.*

**DE PARTITIONE FACIENDA, Breve.** L. Lat. Writ for making partition. A writ which lay to make partition of lands or tenements held by several *pro indiviso* as coparceners, &c. *Reg. Orig. 76. F. N. B. 61, R. O. N. B. 142. 2 Bl. Com. 189. 3 Reeves' Hist. 55.*

**DE PECULIO ACTIO.** See *Actio de peculio*.

**DE PERAMBULATIONE FACIENDA, Breve.** L. Lat. Writ for making perambulation. A writ which lay to ascertain the boundaries of lands, where parties were in doubt of the bounds of their lordships or of their towns; and which was done by *walking about, through* or between them. It was directed to the sheriff, commanding him to go with twelve knights of

his county to the lands in question, and by their oath to cause a *perambulation* to be made between them, according to their respective metes and bounds, (*per terras, metas et divisas.*) *Reg. Orig. 157 b. F. N. B. 133, D.* See *Perambulation*.

**DE PIGNORE SURREPTO FURTI, ACTIO.** Lat. In the civil law. An action to recover a pledge stolen. *Inst. 4. 1. 14.*

**DE PIPA VINI CARIANDA, Breve.** L. Lat. A writ of trespass for carrying a pipe of wine so carelessly that it was stove, and the contents lost. *Reg. Orig. 110.* Alluded to by Sir William Jones in his remarks on the case of *Coggs v. Barnard. Jones on Bailm. 59.*

**DE PLACITO.** L. Lat. Of a plea; of, or in an action. Formal words used in declarations and other proceedings, as descriptive of the particular action brought. *De placito debiti*; of a plea of debt. *De placito conventionis fractæ*; of a plea of breach of covenant. *De placito transgressionis*; of a plea of trespass. *De placito transgressionis super casum*; of a plea of trespass on the case. *Towns. Pl. 162—165.* See *Placitum*.

**DE PLAGIS ET MAHEMIO.** L. Lat. Of wounds and maihem. The name of a criminal appeal formerly in use in England, in cases of wounding and maiming. *Bract. fol. 144 b. 2 Reeves' Hist. 34.* See *Appeal*.

**DE PLAIN.** L. Fr. In a summary way. *Kelham.* See *De plano*.

**DE PLANO.** Lat. & L. Lat. In the civil law. Without form; in a summary manner. The prætor was said to administer justice in this way, (*de plano cognoscere*), when he did so standing on the ground, or on the same level with the suitors, instead of occupying a *tribunal*, (*pro tribunali*), elevated seat, or *bench*, as it was termed in the English law. See *Bench*. The Fr. *de plain* (q. v.) is derived from this.

In the common law. Clearly, manifestly. The phrase is used in this classical sense in the statute *De Bigamis*, 4 Edw. I.

By *covin*, or *collusion*. *Stat. Westm. 2, c. 4.* This did not mean by default. *Id. ibid. 2 Inst. 349.* See *2 Reeves' Hist. 191. 4 Id. 28, 34, 36.*

**DE PLEGIIS ACQUIETANDIS, Breve.** L. Lat. Writ for acquitting or releasing



pledges. A [writ that lay for a surety against him for whom he had become surety for the payment of a certain sum of money at a certain day, where the latter had not paid the money at the appointed day, and the surety was compelled to pay it. *Reg. Orig.* 158. *F. N. B.* 137 C. 3 *Reeves' Hist.* 65.

DE PLEINE AGE. L. Fr. Of full age. *Stat. Mod. Lev. Fines.* 2 *Inst.* 510.

DE PONENDO SIGILLUM AD EXCEPTIONEM, *Breve.* L. Lat. Writ for putting a seal to an exception. A writ by which justices were formerly commanded to put their seals to exceptions taken by a party in a suit. *Reg. Orig.* 182.

DE POST DISSEISINA, *Breve.* L. Lat. Writ of post disseisin. A writ which lay for him who, having recovered lands or tenements by *præcipe quod reddat*, on default, or reddition, was again disseised by the former disseisor. *Reg. Orig.* 208. *F. N. B.* 190.

DE PRÆROGATIVA REGIS. L. Lat. Of the king's prerogative. The title of the statute 17 Edward II. st. 1, defining the prerogatives of the crown on certain subjects, partly of a feudal and partly of a political or general nature. *Crabb's Hist. Eng. Law*, 204, *et seq.*

DE PRÆSENTI. L. Lat. Of the present; in the present tense. See *Per verba de præsentis*.

DE PROCEDENDO IN ASSISA, *Breve.* L. Lat. Writ for proceeding in an assise. A writ by which the justices of assise were commanded to proceed in an assise, where the proceedings had been stayed. *Reg. Orig.* 220.

DE PROPRIETATE PROBANDA, *Breve.* L. Lat. Writ for proving property. A writ directed to the sheriff, to inquire of the property of goods distrained, where the defendant in an action of replevin claims the property. 3 *Bl. Com.* 148. *Reg. Orig.* 85 b.

DE PROTECTIONIBUS. Lat. Of or concerning protections. The title of a statute passed in the 33d year of Edward I., to prevent some of the evil consequences attending the privileges given by writs of protection. 2 *Reeves' Hist.* 242.

DE PROTECTIONE, *Breve.* Lat. Writ

of protection. *Reg. Orig.* 25, 26. See *Protection*.

DE QUES EN CA, *De kes en sea.* L. Fr. From which time until now. *Kelham*.

DE QUO, & DE QUIBUS. Lat. Of which. Formal words in the simple writ of entry, from which it was called a writ of entry "in the *quo*," or "in the *quibus*." 3 *Reeves' Hist.* 33. *Præcipe A. quod—reddat B. tantum terræ—de quo idem A. disseisivit prædictum B., &c.*; command A. that—he render to B. so much land—of which the said A. disseised the aforesaid B., &c. *Reg. Orig.* 229.

DE RAPTU VIRGINUM. Lat. Of the ravishment of maids. The name of an appeal formerly in use in England in cases of rape. *Bract.* fol. 147. 2 *Reeves' Hist.* 38. See *Appeal*.

DE RATIONABILIBUS DIVISIS, *Breve.* L. Lat. Writ for fixing reasonable boundaries. A writ which lay to settle the boundaries between the lands of persons in different towns, where one complained of encroachment. *Reg. Orig.* 157 b. *F. N. B.* 128 M. *Roscoe's Real Act.* 31. 3 *Reeves' Hist.* 48.

DE RATIONABILI PARTE BONORUM, *Breve.* L. Lat. A writ which lay for the wife and children of a deceased person against his executors, to recover their reasonable part or share of his goods. 2 *Bl. Com.* 492. *F. N. B.* 122, L. See *Reasonable part*.

DE RECEPTAMENTO. L. Lat. Of harbouring. *Bract.* fol. 152 b. A term of old criminal law. See *Receptamentum*.

DE RECORDO ET PROCESSU MITTENDIS, *Breve.* L. Lat. Writ to send the record and process of a cause to a superior court; a species of writ of error. *Reg. Orig.* 209.

DE RECTO DEFICERE. L. Lat. To fail of right; to fail in doing justice. A term applied to an inferior court in the old books. *Glanv.* lib. 12, c. 1. *Bract.* fol. 105, 313 b, 329 b. 1 *Reeves' Hist.* 171.

In the ancient law of France, the appeal of default of justice, (*de defaute de droit*), was a proceeding when the court of a particular lord deferred, evaded, or refused to do justice to the parties. *Esprit des Loix*, liv. 28, c. 28.

DE RECTO, *Breve*. L. Lat. Writ of right. *Reg. Orig.* 1, 2. *Bract.* fol. 327 b. See *Writ of Right*.

DE RECTO PATENS, *Breve*. L. Lat. Writ of right patent. *Reg. Orig.* 1. See *Patent*. Called the highest writ in law. *F. N. B.* 1.

DE RECTO DE DOTE, *Breve*. L. Lat. Writ of right of dower. *Reg. Orig.* 3. *F. N. B.* 7, E. *Bract.* fol. 313. See *Dower, Writ of Right*.

DE RECTO DE RATIONABILI PARTE, *Breve*. L. Lat. Writ of right, of reasonable part. A writ which lay between privies in blood, as between brothers in gavelkind, or between sisters or other coparceners for lands in fee simple, where one was deprived of his or her share by another. *Reg. Orig.* 3 b. *F. N. B.* 9, B. *Roscoe's Real Act.* 25. Abolished by statute 3 & 4 Will. IV. c. 27.

DE RECTO DE ADVOCATIONE, *Breve*. L. Lat. Writ of right of advowson. *Reg. Orig.* 29 b. A writ which lay for one who had an estate in an advowson to him and his heirs in fee simple, if he were disturbed to present. *F. N. B.* 30, B. *Roscoe's Real Act.* 26. Abolished by statute 3 & 4 Will. IV. c. 27.

DE REDISSEISINA, *Breve*. L. Lat. Writ of re-disseisin. A writ which lay where a man recovered by assise of novel disseisin land, rent or common, and the like, and was put in possession thereof by verdict, and afterwards was disseised of the same land, rent or common, by him by whom he was disseised before. *Reg. Orig.* 206 b. *F. N. B.* 188, B.

DE REPLEGIARE, *Breve*. L. Lat. Writ of replevin. *Reg. Orig.* 81. *F. N. B.* 68, D. See *Replegiare, Replevin*.

DE RESCUSSU, *Breve*. L. Lat. Writ of rescue or rescous. A writ which lay where cattle distrained, or persons arrested, were rescued from those taking them. *Reg. Orig.* 117, 118. *F. N. B.* 101, C. G.

DE RETORNO HABENDO. L. Lat. For having a return; to have a return. A term applied to the judgment for the defendant in an action of replevin, awarding him a return of the goods replevied; and to the writ or execution issued thereon. 2 *Tidd's Pr.* 993, 1038. 3 *Bl. Com.* 149.

Applied also to the sureties given by the plaintiff on commencing the action. *Id.* 147.

DE SALVA GARDIA, *Breve*. L. Lat. Writ of safe guard. A writ in the nature of a protection, which was allowed to strangers seeking their right by course of law in England, and apprehending violence or injury to their persons or property from others. *Reg. Orig.* 26. See *Safe Guard*.

DE SALVO CONDUCTU, *Breve*. L. Lat. Writ of safe conduct. *Reg. Orig.* 25 b, 26. See *Safe Conduct*.

DE SA VIE. L. Fr. Of his or her life; of his own life; as distinguished from *pur autre vie*, for another's life. *Litt. sect.* 35, 36. *Crabb's Hist.* 383.

DE SCACCARIO. L. Lat. Of, or concerning the exchequer. The title of a statute passed in the 51st year of Henry III. 2 *Reeves' Hist.* 61.

DE SCUTAGIO HABENDO, *Breve*. L. Lat. Writ for having (or to have) escuage or scutage. A writ which anciently lay against tenants by knight-service, to compel them to serve in the king's wars or send substitutes, or to pay escuage, that is, a sum of money. *F. N. B.* 83, C. The same writ lay for one who had already served in the king's army, or paid a fine instead, against those who held of him by knight-service, to recover his escuage or scutage. *Reg. Orig.* 88. *F. N. B.* 83, D. F.

DE SE BENE GERENDO. L. Lat. For behaving himself well; for his good behaviour. *Yelv.* 90, 154.

DE SECTA AD MOLENDINUM, *Breve*. L. Lat. Writ of suit at mill. A writ for compelling suit at a mill. *Reg. Orig.* 153. *F. N. B.* 122, M. 3 *Bl. Com.* 235. See *Secta ad molendinum*. Abolished by statute 3 & 4 Will. 4, c. 27.

DE SECUNDA SUPERONERATIONE, *Breve*. L. Lat. Writ of second surcharge. A writ which lay where admeasurement of pasture had been made, and he that first surcharged the common, did it a second time, notwithstanding the admeasurement. *Reg. Orig.* 157. *F. N. B.* 126, E. 3 *Bl. Com.* 239. 2 *Reeves' Hist.* 198.

DE SERVITIO REGIS. L. Lat. [L. Fr. *de service le roy*.] Of the king's service.

A species of essoin, or excuse for a defendant's non appearance in court, the ground of which was that he was necessarily detained in the king's service. *Glanv.* lib. 1, c. 27. *Bract.* fol. 338 b. *Spelman*, voc. *Essoniare*. 1 *Reeves' Hist.* 118.

**De similibus ad similia eodem ratione procedendum est.** From similar things to similar things we are to proceed by the same rule or reason; [i. e. we are allowed to argue from the analogy of cases.] *Branch's Princ.*

**De similibus idem est iudicandum.** Of [respecting] like things, [in like cases,] the judgment is to be the same. 7 *Co.* 18.

Both these maxims seem to be embraced in, if not derived from, the following passage of Bracton, in which that author, at the commencement of his work, lays down a fundamental principle of the common law. *Si similia evenerint*, per simile iudicentur, *cum bona sit occasio a similibus procedere ad similia*; if like cases have occurred, they [the new cases] are to be judged by the like rule, since it is a good occasion [or proper course] to proceed from like things to like. *Bract.* fol. 1 b.

**DE SON DONE.** L. Fr. Of his gift. See *Sur cognizance*, &c.

**DE SON TORT.** L. Fr. Of his own wrong. A stranger who takes upon him to act as an executor without any just authority, is called an executor of his own wrong, (*de son tort*.) 2 *Bl. Com.* 507. 2 *Steph. Com.* 244.

**DE SON TORT DEMESNE.** L. Fr. Of his own wrong. See *De injuria sua propria*, &c.

**DE STATUTO, Breve.** L. Lat. Writs founded upon statute. *Reg. Orig.* 173—188.

**DE STATUTO MERCATORIO, Breve.** L. Lat. Writ of statute merchant. A writ which lay for imprisoning him who had forfeited a statute merchant bond, until the debt was satisfied. *Reg. Orig.* 146 b. There are several writs under this head. *Id.* 148. *Reg. Jud.* 8. See *Statute merchant*.

**DE STATUTO STAPULÆ, Breve.** L. Lat. Writ of statute staple. A writ that lay to take the body to prison, and seize upon the lands and goods of one who had forfeited the bond called statute staple. *Reg. Orig.* 151. See *Statute staple*.

**DE SUPERONERATIONE PASTURÆ, Breve.** L. Lat. Writ of surcharge of pasture. A judicial writ which lay for him who was impleaded in the county court, for surcharging a common with his cattle, in a case where he was formerly impleaded for it in the same court, and the cause was removed into one of the courts at Westminster. *Reg. Jud.* 36 b.

**DE SUPERSEDENDO, Breve.** L. Lat. Writ of supersedeas. *Reg. Orig.* 274—278. See *Supersedeas*.

**DE SYLVA CÆDUA, Breve.** L. Lat. Writ concerning coppice wood. *Reg. Orig.* 44. See *Sylva Cædua*.

**DE TALLAGIO NON CONCEDENDO.** L. Lat. Of not granting tallage. The title of a statute passed in the 34th year of Edward I. st. 4, declaring that no tallage or aid should be imposed or levied by the king, or his heirs, without the will and assent of the archbishops, bishops, earls, barons, knights, burgesses, and other freemen of the commons of the realm. It contained also important general declarations in favor of liberties claimed by the subject. 2 *Inst.* 532. 2 *Reeves' Hist.* 104, 105.

**DE TEMPORE CUJUS CONTRARIUM MEMORIA HOMINUM NON EXISTIT.** L. Lat. From time whereof the memory of man does not exist to the contrary. *Litt. sect.* 170. See *infra*.

**DE TEMPS DONT MEMOIRE NE COURT.** L. Fr. From time whereof memory runneth not; time out of memory of man. *Litt. sect.* 143, 145, 170.

**DE TEMPORE IN TEMPUS ET AD OMNIA TEMPORA.** L. Lat. From time to time, and at all times. *Towns. Pl.* 17.

**DE TERRA SANCTA.** Lat. Of the Holy land. A species of essoin, the ground of which was that the party had gone to the holy land. *Glanv.* lib. 1, c. 29. *Bract.* fol. 339. *Spelman*, voc. *Essoniare*. See *Essoin*.

**DE THEOLONIO, Breve.** L. Lat. Writ of toll. A writ of trespass which lay where a person was prevented from taking toll. *Reg. Orig.* 103.

**DE TRANSCRIPTO PEDIS FINIS LEVATI MITTENDO, Breve.** L. Lat. A

writ for sending the transcript of the foot of a fine levied. *Reg. Orig.* 169.

**DE TRANSGRESSIONE**, *Breve*. L. Lat. Writ of trespass. *Reg. Orig.* 92—111. See *Trespass*.

**DE TRANSGRESSIONE, AD AUDIENDUM ET TERMINANDUM**, *Breve*. L. Lat. The name of a writ or commission for hearing and determining any outrage or misdemeanor. 2 *Reeves' Hist.* 170. See *Ad audiendum et terminandum*, *Oyer and Terminer*.

**DE ULTRA MARE**, [or **DE TRANS MARE**; L. Fr. *de outre la mer*.] L. Lat. Of beyond sea. A species of *essoin*, the ground of which was that the party was detained in parts beyond the seas. *Glanv.* lib. 1, c. 25. *Bract.* fol. 339. *Spelman*, voc. *Essoniare*. 1 *Reeves' Hist.* 118, 406. See *Essoin*.

**DE UXORE RAPTA ET ABDUCTA**, *Breve*. L. Lat. A writ which lay where a man's wife had been ravished and carried away. A species of writ of trespass. *Reg. Orig.* 97. *F. N. B.* 89 O. 3 *Bl. Com.* 139.

**DE VASTO**, *Breve*. L. Lat. Writ of waste. A writ which might be brought by him who had the immediate estate of inheritance in reversion or remainder, against the tenant for life, in dower, by curtesy, or for years, where the latter had committed waste in lands; calling upon the tenant to appear and show cause why he committed waste and destruction in the place named, to the disinherison (*ad exheredationem*) of the plaintiff. *Reg. Orig.* 72—75. *Reg. Jud.* 17 b. *F. N. B.* 55 C. 3 *Bl. Com.* 227, 228. Abolished by statute 3 & 4 Will. IV. c. 27. 3 *Steph. Com.* 506.

**DE VENTRE INSPICIENDO**, *Breve*. L. Lat. Writ of (or for) inspecting the belly. A writ which a presumptive heir may have in England, to examine a widow suspected of feigning herself pregnant, (with a view to produce a supposititious heir to the estate,) in order to ascertain whether she be with child or not. 1 *Bl. Com.* 456. 2 *Steph. Com.* 318. *Reg. Orig.* 227. *Bract.* fol. 69 b.

**DE VERBO IN VERBUM**. L. Lat. Word for word. *Bract.* fol. 138 b.

**DE VICINETO**. L. Lat. From the neighborhood, or vicinage. 3 *Bl. Com.*

360. A term applied to a jury. See *Vicinetum*.

**DE VI LAICA AMOVENDA**, *Breve*. L. Lat. Writ of (or for) removing lay force. A writ which lay where two parsons contended for a church, and one of them entered into it with a great number of *laymen*, and held out the other *vi et armis*; then he that was holden out had this writ directed to the sheriff, that he remove the force. *Reg. Orig.* 59. *F. N. B.* 54 D.

**DE VIRIDARIO ELIGENDO**, *Breve*. L. Lat. Writ to elect a verderor. *Reg. Orig.* 177 b. *F. N. B.* 164 C.

**DE VIRIDI ET VENATIONE**. L. Lat. Of vert and venison. Of, or relating to the greensward of the king's forests, and the king's deer. *Cart. de Forest.* 9 Hen. III. 4 *Inst.* 289. 3 *Bl. Com.* 71, 72. A term of the old forest law. See *Vert & Venison*.

**DE VISINETU**. L. Lat. Of the vicinage. *Reg. Orig.* 32 b. *Reg. Jud.* 4. See *De vicineto*.

**DE WARRANTIA CHARTÆ**, *Breve*. L. Lat. Writ of warranty of charter. A writ which lay for him who was enfeoffed, with clause of warranty [in the charter of feoffment,] and was afterwards impleaded in an assise or other action, in which he could not *vouch* or call to warranty; in which case he might have this writ against the feoffor, or his heir, to compel them to warrant the land unto him. *Reg. Orig.* 157 b. *F. N. B.* 134 D. *Termes de la ley*, voc. *Warrantia charta*. *Cowell*, *Blount*. 3 *Reeves' Hist.* 55. Abolished by statute 3 & 4 Will. IV. c. 27.

**DE WARRANTIA DIEI**, *Breve*. L. Lat. Writ of warranty of day; or of warranty of default for a day. An ancient writ which lay where one having a day assigned personally to appear in court to an action, was, in the mean time, employed in the king's service, so that he could not come at the day appointed. It was directed to the justices, commanding them not to put the party in default for his absence on that day, because, as to that matter, the king warranted to him that day. *Reg. Orig.* 18, 19. *F. N. B.* 17.

**DEACON**. [Lat. *diaconus*, from Gr. *διακόνος*.] In ecclesiastical law. A minister or servant in the church, whose office is to assist the priest in divine service and the distribution of the sacrament. It is the

lowest order in the church of England. *Wharton's Lex. Brande.*

**DEADFREIGHT.** In maritime law. A kind of freight payable by the charterer of a vessel, when the cargo in respect of which it is payable has, from some cause, on the part of the charterer, not been conveyed as provided. *Jacobsen's Sea Laws*, 287—292. 3 *Campb.* 428.

**DEADLY FEUD.** [Lat. *faida mortalis* or *mortifera*.] A profession of irreconcilable hatred against an enemy, until revenge were obtained even by his death. This was allowed by the ancient Saxon laws, where a man had been killed, and no pecuniary satisfaction had been made to his kindred. *Spelman*, voc. *Faida*. The term was also applied to the predatory warfare carried on in the northern borders of England. *Stat.* 43 *Eliz.* c. 13. 4 *Bl. Com.* 244. See *Faida*.

**DEAD MAN'S PART, or DEATH'S PART.** In English law. That portion of the effects of a deceased person which, by the custom of London and York, is allowed to the administrator; being, where the deceased leaves a widow and children, one-third; where he leaves only a widow or only children, one-half; and where he leaves neither, the whole. This portion the administrator was wont to apply to his own use, till the statute 1 Jac. II. c. 17, declared that the same should be subject to the statute of distributions. 2 *Bl. Com.* 518. 2 *Steph. Com.* 254. 4 *Reeves' Hist.* 83. A similar portion in Scotch law is called *dead's part*, (q. v.)

**DEADPLEDGE.** [L. Lat. *mortuum vadium*.] A mortgage. See *Mortgage*, *Mortuum Vadium*.

**DEAD'S PART.** In Scotch law. That portion of the property of a deceased person which remained over the *jus relictae* (share of the widow), and the children's *legitim*, (lawful portion;) and so called because the deceased had full power over it, and might give it to whom he pleased. *Ersk. Inst.* b. 3, tit. 9, §§ 15, 18.

**DEADVOCARE.** L. Lat. [from *de* priv. and *advocare*, to advocate or acknowledge.] In old English law. To abandon a cause, (*causam deserere*,) or give up its advocacy. *Spelman*.

To disavow, or disclaim; to refuse to acknowledge. *Id.* Applied in Bracton to the refusal of a tenant to acknowledge a

new lord to whom he had been transferred, or *attorned* by his former lord, and to the refusal of a man to acknowledge a child to be his. *Bract.* fol. 82, 203 b. *Id.* fol. 278.

**DE-AFFOREST.** [L. Lat. *deafforestare*, *deforestare*.] In English law. To discharge from being a forest; to release or exempt from the forest law. *Stat.* 17 *Car.* 1, c. 16. *Reg. Jud.* 83 b. See *Disafforest*.

**DEALBARE.** L. Lat. [from *albus*, white.] In old English law. To whiten or make white. *Dealbare firmam*; to whiten rent or farm; that is, to convert the base money in which rent (*firma*) was paid, into silver (*white* money) or its value: to reduce it to the fineness of standard silver by melting it down in the exchequer, or make it equal to silver by paying the difference in value. *Cowell*, voc. *Blanche Firmes*. *Spelman*. *Lib. Niger Scacc.* cited *ibid.* An obsolete term of the exchequer. See *Alba firma*.

**DEAN.** [Lat. *decanus*; Gr. *δευαρος*, from *δεκα*, ten.] In English ecclesiastical law. An ecclesiastical dignitary who presides over the chapter of a cathedral, and is next in rank to the bishop. So called from having been originally appointed to superintend *ten* canons or prebendaries. 1 *Bl. Com.* 382. *Co. Litt.* 95. *Spelman*, voc. *Decanus*. See *Decanus*.

**DEAN AND CHAPTER.** [L. Lat. *decanus et capitulum*.] In English ecclesiastical law. A spiritual corporation constituting the council of a bishop, to assist him with their advice in affairs of religion; and also in the temporal concerns of his see. 1 *Bl. Com.* 382. 3 *Co.* 74, 75. *Co. Litt.* 103, 400. 3 *Steph. Com.* 67. 1 *Wooddes. Lect.* 182. *Spelman*, voc. *Decanus*. *Wharton*. Dean and chapter now supply the place of prior and convent. 3 *Co.* 74.

**DEAN OF THE ARCHES.** The presiding judge of the court of Arches in England. See *Arches Court*.

By the act of 3 & 4 Vict. c. 65, the Dean of Arches is made an assistant judge of the court of admiralty. 3 *Steph. Com.* 727. 1 *Kent's Com.* 371, and note.

**DEATH BED.** In Scotch law. A state of sickness which ends in death. *Ersk. Inst.* b. 3, tit. 8, § 95.

**DEATHBED DEED.** In Scotch law. A deed made by a person while laboring under a distemper of which he afterwards

died. *Ersk. Inst. lib. 3, tit. 8, § 96.* A dead is understood to be in death bed if before signing and delivery thereof the grantor was sick, and never convalesced thereafter. 1 *Forbes' Inst.* part 3, b. 2, c. 4, tit. 1, sec. 1.

DEBAS, *Debase.* L. Fr. Below, under, beneath. *Kelham.*

DEBASSA. L. Fr. Downwards. *Kelham.*

DEBENTURE. [from Lat. *debere*, to owe.] A custom-house certificate, entitling the exporter of imported goods to a drawback of duties paid on their importation. *Act of Congress*, March 2, 1799, s. 80. *Stat. 3 & 4 Will. IV. c. 52, § 86.* See *Drawback.*

An instrument in use in some government departments, by which government is charged to pay to a creditor or his assigns, the sum found due on auditing his accounts. *Brande. Blount.*

DEBET. Lat. [from *debere*, to owe.] He owes; he ought. See *infra.*

DEBET ET DETINET. L. Lat. He owes and detains. Words anciently used in the original writ, (and now, in English, in the plaintiff's declaration,) in an action of debt, where it was brought by one of the original contracting parties who personally gave the credit, against the other who personally incurred the debt, or against his heirs, if they were bound to the payment; as by the obligee against the obligor, by the landlord against the tenant, &c. The declaration, in such cases states that the defendant "*owes to*," as well as "*detains from*" the plaintiff the debt or thing in question; and hence the action is said to be "*in the debet et detinet.*" *F. N. B. 119, G. 3 Bl. Com. 155.* Where the declaration merely states that the defendant *detains* the debt, (as in actions by and against an executor for a debt due to or from the testator,) the action is said to be "*in the detinet*" alone. *Id. ibid. Tomlins.* See *Detinet.*

DEBET ET SOLET. L. Lat. He owes and is used, [or has been used to do]. Words anciently used in writs, showing both a *right* and a *custom* as the ground of the claim; as in the writs *De secta ad molendinum*, *De molendino, domo, et ponte reparanda*, &c. *Reg. Orig. 153.*

Where a person sued to recover any right whereof his ancestor was disseised by the tenant or his ancestor, he used only

the word *debet* in his writ, *solet* not being proper because his ancestor was disseised and the estate discontinued. But if he sued for any thing that was for the *first time* denied him, he used both the words *debet et solet*, because his ancestor before him, as well as he himself had *usually enjoyed* the thing for which he sued, until the present refusal of the tenant. *Termes de la ley. Old N. B. 98. F. N. B. 122, M. 123.*

*Debet esse finis litium.* There ought to be an end of suits; there should be some period put to litigation. *Jenk. Cent. 61.* See *Interest reipublicum ut sit finis litium.*

*Debet quis juri subjacere ubi delinquit.* One [every one] ought to be subject to the law [of the place] where he offends. 3 *Inst. 34.* This maxim is taken from Bracton. *Bract. fol. 154 b.*

*Debile fundamentum fallit opus.* A weak foundation frustrates, [or renders vain] the work [built upon it.] *Shep. Touch. 60. Noy's Max. 5, max. 12.* When the foundation fails all goes to the ground; as where the cause of action fails, the action itself must of necessity fail. *Wingate's Max. 113, 114, max. 40. Broom's Max. 80.*

DEBITA FUNDI. L. Lat. In Scotch law. Debts secured upon land. *Ersk. Inst. b. 4, tit. 1, § 11.*

DEBITA LAICORUM. L. Lat. In old English law. Debts of the laity, or of lay persons. Debts recoverable in the civil courts were anciently so called. *Crabb's Hist. Eng. Law, 107.*

*Debita sequuntur personam debitoris.* Debts follow the person of the debtor; that is, they have no locality and may be collected wherever the debtor can be found. 2 *Kent's Com. 429. Story's Const. Laws, § 362.*

DEBITO AUT LEGITIMO MODO. L. Lat. In a due or lawful manner.

DEBITOR. Lat. [from *debere*, to owe.] A debtor. *Debitor intelligatur is a quo invito exigi pecunia potest*; a debtor may be understood to be one from whom money may be exacted against his will. *Dig. 50. 16. 108.*

*Debitor non presumitur donare.* A debtor is not presumed to make a gift. Whatever disposition he makes of his property is supposed to be in satisfaction of his debts. 1 *Kames' Equity, 212.* Where a debtor

gives money or goods, or grants bond to his creditor, the natural presumption is that he means to get free from his obligation, and not to make a present, unless donation be expressed. *Ersk. Inst.* b. 3, tit. 3, § 93.

**DEBITUM.** Lat. [from *debere*, to owe.] A thing due or owing; a debt. *Inst.* 3. 15. 1. *Stat. Westm.* 2, c. 18. See *Debitor*.

**Debitum et contractus sunt nullius loci.** Debt and contract are of [belong to] no place; have no particular locality. The obligation in these cases is purely personal, and actions to enforce it may be brought any where. 2 *Inst.* 231. *Story's Conf. Laws*, § 362. 1 *Smith's Lead. Cas.* 340, 363. *Broom's Max.* 414, note. Verbal contracts are for the purpose of jurisdiction *nullius*, or rather *uniuscujusque loci*. 7 *Man. & Gr.* 1019, note.

**DEBITUM IN PRÆSENTI SOLVENDUM IN FUTURO.** L. Lat. A debt due at present to be paid in future. A term applied to obligations which are absolute or perfect when contracted, though not payable before a certain future day, as bonds and notes. *Co. Litt.* 292 b. 1 *Burr.* 228. —The right of the government to duties on imported goods accrues, in the fiscal sense of the term, on the arrival of the goods in the proper port of entry; yet it is but a *debitum in præsentī, solvendum in futuro*, according to the requisition of the revenue collection act of March 2, 1799, ch. 128; and therefore if a deposit of the goods is made by the importer, or a bond is given by him for the duties, pursuant to the provisions of that act, the importer is entitled to the full credit allowed by that act. *Story, J.*, 13 *Peters' R.* 494. Rent, before the appointed day of payment is not *debitum in præsentī, solvendum in futuro*; but is a contingent claim liable to be wholly defeated by many intervening acts or events. 11 *Mass.* 493. *Co. Litt.* 292 b.

**DEBOTER.** L. Fr. To hinder. *Debote*; hindered. *Britt.* c. 40.

**DEBRUSER.** L. Fr. To break. *Ceux queux ont debruse la prison*; those who have broken the prison. *Stat. Westm.* 1, c. 15. *Britt.* c. 11.

To break down, as a bridge. *L. Fr. Dict.*  
To break to pieces. *Id.*

**DEBRUSURE.** L. Fr. [from *debruser*, q. v.] A breaking. *Britt.* c. 1.

**DEBT.** [Lat. *debitum*; L. Fr. *det, dett,*

*dette*.] A sum of money due by certain and express agreement; as by bond for a determinate sum, a bill or note, a special bargain, or a rent reserved on a lease, where the amount is fixed and specific, and does not depend upon any subsequent valuation to settle it. 3 *Bl. Com.* 154. Debt is otherwise described by Sir William Blackstone as a species of *contract*, whereby a chose in action, or right to a certain sum of money is mutually acquired and lost. 2 *Bl. Com.* 464. See *Smith's Merc. Law*, 319. This, however, as Mr. Stephen observes, conveys no accurate idea of the meaning of the term; a debt not being a contract, but the *result* of a contract. 2 *Steph. Com.* 187, note. *Id.* 186.

The word "debt" is of large import, including not only debts of record, or judgments, and debts by specialty, but also obligations arising under simple contract, to a very wide extent; and in its popular sense includes all that is due to a man under any form of obligation or promise. Hubbard, J. 3 *Metcalf's R.* 522, 526.

**DEBT.** [L. Lat. *breve, seu actio de debito*.] In practice. The name of an action which lies at law to recover a certain specific sum of money; or a sum that can readily be reduced to a certainty. 3 *Bl. Com.* 154. 3 *Steph. Com.* 461. 1 *Tidd's Pr.* 3. 1 *Archb. N. Prius*, 200. *Browne on Actions*, 333. *Smith on Contracts*, 297.

**DEBT OF RECORD.** A debt which appears to be due by the evidence of a court of record, as by a judgment or recognizance. 2 *Bl. Com.* 465.

**DEBT BY SPECIALTY,** or *special contract.* A debt due, or acknowledged to be due by some deed or instrument under seal; as a deed of covenant or sale, a lease reserving rent, or a bond or obligation. 2 *Bl. Com.* 465. See *Specialty*.

**DEBT BY SIMPLE CONTRACT.** A debt or obligation arising upon a contract which is ascertained by mere oral evidence; or upon some written agreement or contract not under seal.\* 2 *Bl. Com.* 465. See *Simple contract*.

**DEBT EX MUTUO.** L. Lat. A species of debt or obligation mentioned by Glanville and Bracton, and which arose *ex mutuo*, out of a certain kind of loan. *Glanv.* lib. 10, c. 3. *Bract. fol.* 99. See *Mutumum, Ex mutuo*.

**DEBTTEE.** A person to whom a debt is

due; a creditor. 3 *Bl. Com.* 18. *Plowd.* 543. Not used.

**DEBTOR.** [Lat. *debitor*; L. Fr. *detour.*] A person who owes a sum of money, or is indebted to another.

**DEBTOR IN SOLIDO.** See *In solido.*

**DECA, Decea, Decha.** L. Fr. On this side; from this, hence. *Decea la meer*; on this side the sea. *Britt.* c. 123.

**DECANATUS.** L. Lat. [from *decanus*, q. v.] A deanery. *Spelman.*  
A company of ten persons. *Calvin Lex. Jurid.*

**DECANIA.** L. Lat. [from *decanus*, q. v.] The office, jurisdiction, territory or command of a *decanus*, or dean. *Spelman.* See *Decanus.*

**DECANUS.** Lat. [from Gr. *δεκανος*, from *δεκα*, ten.] In ecclesiastical and old European law. An officer having supervision over *ten*; a dean. A term applied not only to ecclesiastical, but to civil and military officers. *Spelman.*

*Decanus monasticus*; a monastic dean, or dean of a monastery; an officer over ten monks. *Spelman.* *Calvin Lex. Jurid.*

*Decanus in majori ecclesia*; dean of a cathedral church, presiding over ten prebendaries. *Spelman.* See *Dean.*

*Decanus episcopi*; a bishop's or rural dean; presiding over ten clerks or parishes. *Spelman.* *Lyndewode Prov.* lib. 1, tit. *de constit.* c. 1. verb. *Decanos rurales.* See *Rural Deans.*

*Decanus friborgi*; dean of a friborg. An officer among the Saxons who presided over a friborg, tithing, decennary, or association of ten inhabitants; otherwise called a tithing man, or borsholder, (Lat. *decurio, capitalis friborgus, friborgi caput*, qq. v.) *Spelman.* *LL. Edw. Conf.* cited *ibid.* See *Friborg.*

*Decanus militaris*; a military officer, having command of ten soldiers. *Spelman.* *Vegetius*, lib. 2, c. 13. *Calvin Lex. Jurid.*

**DECEDER.** L. Fr. To die. See *Deces.*

**DECEDERE.** Lat. To depart; to die. *Calvin Lex. Jurid.* *Intestatus decedit*; a man dies intestate. *Inst.* 3. 1. pr.

**DECEDENS.** Lat. [from *decelere*, q. v.] A person dying; a deceased person; a decedent. *Cum post mortem alicujus decedentis intestati*; when after the death of

a person dying intestate. *Stat. Westm.* 2, c. 19.

**DECEDENT.** A deceased person. *Bouvier.*

**DECEIT.** [L. Fr. *disceit*; Lat. *deceptio.*] In old English law. A subtle trick or device, whereunto may be referred all manner of craft and collusion used to deceive and defraud another by any means whatsoever, which hath no other or more proper name than *deceit* to distinguish the offence. *West Symbol.* part 2, tit. *Indictments*, § 68. *Cowell.* *Jacob.*

**DECEIT, Disceit.** [L. Lat. *breve de deceptione.*] In old practice. The name of a judicial writ which formerly lay to recover lands which had been lost by default by the tenant in a real action, in consequence of his not having been summoned by the sheriff, or by the collusion of his attorney. *Roscoe's Real Act.* 136. 3 *Bl. Com.* 166. *Reg. Jud.* 18. See *Reg. Orig.* 113. Abolished by statute 3 & 4 Will. IV. c. 27.

The name of an original writ, and the action founded on it, which lay to recover damages for any injury committed *deceitfully*, either in the name of another, (as by bringing an action in another's name, and then suffering a nonsuit, whereby the plaintiff became liable to costs;) or by a fraudulent warranty of goods, or other personal injury committed contrary to good faith and honesty. 3 *Bl. Com.* 166. *Reg. Orig.* 112—116. *F. N. B.* 95 E, 98. This has, in modern times, given place to an action on the case in the nature of deceit. *Bull. N. P.* 30. 1 *Archb. N. Prius*, 440. 2 *Kent's Com.* 483, note.

**DECEM TALES.** L. Lat. (Ten such; or ten tales [jurors].) In practice. The name of a writ which issues in England, where, on a trial at bar, *ten* jurors are necessary to make up a full panel, commanding the sheriff to summon the requisite number. 3 *Bl. Com.* 364. *Reg. Jud.* 30 b. 3 *Steph. Com.* 602.

**DECEMVIRI LITIBUS JUDICANDIS.** Lat. In the Roman law. Ten persons (five senators and five *equites*) who acted as the council or assistants of the prætor, when he decided on matters of law. *Hallifax Anal.* b. 3, c. 8. According to others, they were themselves judges. *Calvin Lex. Jurid.*

**DECENNA.** L. Lat. [from *decem*, ten.] In old English law. A tithing or decennary; the precinct of a frankpledge; consisting



of ten freeholders with their families. *Spelman. Bract. fol. 124 b. 2 Inst. 73. 1 Bl. Com. 114. See Decennary, Tithing, Frankpledge, Friborg.*

**DECENNARIUS, Decinarius.** L. Lat. A deciner; one of the ten freeholders composing a decennary; otherwise called a handborowe. *Spelman. Id. voc. Handborowe. See Deciner, Frankpledge.*

**DECENNARY.** [L. Lat. *decenna*.] A tithing, composed of ten neighboring families. *1 Reeves' Hist. 13. 1 Bl. Com. 114.*

**DECENNIER.** See *Deciner*.

**DECEPTIO.** Lat. Deceit. See *Deceit*.

**DECERNERE.** Lat. To decree; to decide; in the Scotch phrase, to *decern*. *Rez decernit*; the king decrees. *Artic. Cleri, c. 7.*

**DECES.** L. Fr. Decease; death. *Britt. c. 93.*

**DECESSUS.** L. Lat. [from *decedere*, q. v.] Departure. *3 Salk. 123. See Departure.*

**DECIDERE.** L. Lat. To decide; to determine, or put an end to. *Bract. fol. 1 b.* To fall, or fall to; to remain to; to escheat. *Bract. fol. 84 b. Stat. Quia Empiores, c. 2.*

**DECIES TANTUM.** L. Lat. (Ten times as much.) In English practice. The name of a writ given by the statute 38 Edw. III. c. 12, 13; (or, according to Mr. Reeves, by 34 Edw. III. c. 8;) which lay against a juror who had taken money of either party for giving his verdict, to recover *ten times as much* as the sum taken. It also lay against embraceors for intermeddling with a jury. *Reg. Orig. 188 b. 3 Reeves' Hist. 56. F. N. B. 171. Termes de la ley. It was a species of popular action. Id. See Plowd. 85. The statutes upon which it was founded were repealed by statute 6 Geo. IV. c. 50, § 62. Wharton's Lex.*

**DECIMA.** L. Lat. A word used in old records for *decenna*, (q. v.) *LL. Inæ*, cited in *Spelman*, voc. *Decanus*.

**DECIMÆ.** L. Lat. [from *decem*, ten; L. Fr. *dismes*.] In ecclesiastical law. Tenths. The tenth part of the annual profit of livings, or ecclesiastical benefices, formerly

claimed of the English clergy by the papal see, and afterwards made a part of the royal revenue. *1 Bl. Com. 284, 285.* Tenths now form a part of the fund called Queen Anne's bounty. *Id. 286. 2 Steph. Com. 548, 550.*

**Tithes.** *Ecclesia decimas non solvit ecclesiæ*; the church does not pay tithes to the church. A vicar pays no tithes to the rector, nor the rector to the vicar. *Cro. Eliz. 479, 511. 2 Bl. Com. 31. See Tithes.*

**DECINER, Desiner, Desnier.** Anglo-Norm. [from Fr. *dismier*; L. Lat. *decennarius*.] In old English law. One of a decennary, or tithing; a handborow. *Spelman. Termes de la ley. See Decennary, Friborg.*

**DECISIVE (or DECISORY) OATH.** [L. Lat. *sacramentum decisionis*.] A mode of trial in the civil law, where one of the parties to the suit, not being able to prove his charge, offered to refer the *decision* of the cause to the *oath* of his adversary. *Cod. 4. 1. 2. 3 Bl. Com. 342. Hallifax Anal. b. 3, c. 9, num. 36—38. See Sacramentum decisionis.*

**DECLAMATIO.** L. Lat. Proclamation. *Bract. fol. 355 b.*

**DECLARATION.** [L. Lat. *narratio*; and formerly *intentio, petitio*; L. Fr. *counte, entente*.] In pleading. A plaintiff's statement in writing, or legal specification on record, of the circumstances which constitute his cause of action; called in real actions, *count*, and anciently *tale*. It is "the first of the pleadings in an action at law, and is usually divided into several sections or paragraphs, termed *counts*. It consists of the following formal parts: the title, the venue, the commencement, the statement of the cause of action, the several counts, and the conclusion. *1 Chitt. Pl. 240, 262, et seq. Steph. Pl. 29. 3 Bl. Com. 293. 3 Steph. Com. 573. See Count.*

**DECLARATION OF TRUST.** The creation or acknowledgment of a trust. An admission by an individual that a property, the title of which he holds, is held by him as trustee for another.

The instrument or writing by which such acknowledgment is made, whether in regular form or otherwise, as by letter. *2 Crabb's Real Prop. 547, § 1764. 1 Hilliard's Real Prop. 303.*

**DECLARATOR.** In Scotch law. An

action whereby a party prays something to be declared in his favor. *Scotch Dict.*

**DECLARATORY ACTION.** In Scotch law. An action in which the right of the pursuer (or plaintiff) is craved to be declared, but nothing claimed to be done by the defender (defendant). *Scotch Dict. Ersk. Inst. b. 5, tit. 1, § 46.* Otherwise called an action of declarator. *Id. ibid.*

**DECLARATORY STATUTE.** A statute declaratory of the common law. A statute which, instead of introducing a new law, only declares what is the existing law; and the object of which is to remove doubts which have arisen on the subject. 1 *Chitt. Bl. Com. 86*, and note.

**DECLARE.** In pleading. To state a plaintiff's cause of action at law, according to the rules of pleading, and the practice of the court. Declaring includes not only the preparation of the plaintiff's declaration in proper form, but the exhibition of it to the court by filing, and to the opposite party by service. See *Declaration, Filing, Service.*

**DECLINATORY PLEA.** In English practice. The plea of sanctuary, or of benefit of clergy, before trial or conviction. 2 *Hal. P. C. 236.* 4 *Bl. Com. 333.* Now abolished. 4 *Steph. Com. 400*, note. *Id. 436*, note.

**DECOCTOR.** Lat. [from *decoquere*, to waste, break or lose.] In the Roman law. A bankrupt; a spendthrift. *Calvin Lex. Jurid.*

**DECOUPER.** L. Fr. To cut down; to cut off. *L. Fr. Dict. Kelham.*

**DECREE.** [Lat. *decretum*.] In practice. The judgment of a court of equity or admiralty, answering to the judgment of a court of common law. A decree in equity is a sentence or order of the court, pronounced on hearing and understanding all the points in issue, and determining the right of all the parties to the suit, according to equity and good conscience. 2 *Daniell's Chanc. Pr. 1192.*

In the canon law. The first of the two great divisions of the *Corpus Juris Canonici*; more commonly known as Gratian's decree, (*decretum Gratiani*, q. v.)

In the civil law. See *Decretum*.

**DECREE OF FORTHCOMING.** In Scotch law. The adjudication of the court, after process of arrestment, which entitles

the creditor to demand the sum arrested, to be applied for payment of the debt upon which the arrestment and forthcoming proceeded. 2 *Kames' Equity*, 177, 178. *Id.* 182, 194. See *Arrestment, Forthcoming*.

**DECREET.** In Scotch law. The decree, judgment or sentence of a court. See *infra*.

**DECREET ABSOLVITOR.** In Scotch law. A decree dismissing a claim, or acquitting a defendant. 2 *Kames' Equity*, 367. 1 *Forbes' Inst. part 4, b. 1, c. 2, tit. 1, sect. 3.*

**DECREET ARBITRAL.** In Scotch law. The award of arbitrators. 1 *Kames' Equity*, 312, 313. 2 *Id.* 367. *Ersk. Inst. b. 4, tit. 3, § 29.*

**DECREET IN ABSENCE.** In Scotch law. A decree or sentence, at pronouncing whereof either party is absent. 1 *Forbes' Inst. part 4, b. 1, c. 2, tit. 1, sect. 3.*

**DECRETALES.** L. Lat. In ecclesiastical law. Decretals; the title of the second of the two great divisions of the *Corpus Juris Canonici*; consisting of the *Decretales Gregorii Noni*, the *Decretales Bonifacii Octavi*, the *Clementine*, and the *Extravagantes*, (qq. v.) 1 *Mackeld. Civ. Law*, 81, 83, Kaufmann's note. *Hallifax Anal. b. 1, c. 1.*

**DECRETALES GREGORII NONI.** L. Lat. Decretals of Gregory the Ninth. A collection of canon law, published by Pope Gregory IX., A. D. 1234, consisting of five books, each of which is subdivided into titles, and each title into chapters. These decretals contain the papal decrees from the time of Pope Alexander III., and are cited by the name of the title, and the number of the chapter, with the addition of the word *Extra*, or the capital letter X. 1 *Mackeld. Civ. Law*, 83, note. *Hallifax Anal. b. 1, c. 1.* See *Decretales*.

**DECRETALES BONIFACII OCTAVI.** L. Lat. Decretals of Boniface the Eighth. A collection of canon law, more commonly known as the *Liber Sextus Decretalium*, or *Sextus Decretalium*. See *Sextus Decretalium*.

**DECRETALS.** [L. Lat. *decretales*.] The title of the second of the two great divisions of the canon law, the first being called the *Decree* (*decretum*). See *Decretales, Decretum*.

**DECRETUM.** Lat. [from *decernere*, to

decree.] In the civil law. A species of imperial constitution, being a judgment or sentence given by the emperor upon hearing of a cause, (*quod imperator cognoscens decrevit.*) *Inst.* 1. 2. 6. Cooper's Notes, *in loc.* 1 *Mackeld. Civ. Law*, 41, § 50. For other senses, see *Calvin's Lex. Jurid.*

**DECRETUM.** Lat. In the canon law. An ecclesiastical law, in contradistinction to a secular law, (*lex*.) 1 *Mackeld. Civ. Law*, 81, § 93, Kaufmann's note.

The title of the first of the two great divisions of the *Corpus Juris Canonici*; more commonly known as *Decretum Gratiani*, (q. v.)

**DECRETUM GRATIANI.** Lat. Gratian's decree, or *decretum*. A collection of ecclesiastical law in three books or parts, made in the year 1151, by Gratian, a Benedictine monk of Bologna, being the oldest as well as the first in order of the collections which together form the body of the Roman canon law. 1 *Bl. Com.* 82. 1 *Reeves' Hist. Eng. Law*, 67. 1 *Mackeld. Civ. Law*, 81, § 93, Kaufmann's note.

**DECURIA.** L. Lat. In Saxon law. A tithing or decennary, otherwise called *decenna*, *decania* and *decima*, (qq. v.) *Spelman*, vocc. *Decanus*, *Friborga*.

**DECURLÆ.** L. Lat. In old European law. Marks or incisions made on trees for the purpose of designating boundaries. *LL. Wisegoth.* lib. 8, tit. 6, l. 1. *Spelman*.

**DECURIO.** Lat. In the Roman law. A kind of provincial senator. The *decuriones* were members of a council or senate established in all the great towns in the Roman provinces, constituting a kind of municipal corporation, and having the whole administration of the internal affairs of the places in which they resided. 1 *Spence's Chancery*, 54. Cooper's *Justin. Inst. Notes*, \*439. *Calvin's Lex. Jurid.*

**DECURIONATUS.** Lat. The office of a decurio. *Calv. Lex. Jur.* *Phillimore on Domicil*, 3.

**DEDEINS.** *Dedeinz*, *Dedinz*, *Dedenz*, *Dedens*, *De daynes*. L. Fr. Within; in. *Dedeins la vierge*; within the verge. *Artic. Sup. Chart.* c. 3.

*Clos dedens meson, ou dedens parkes*; shut up in a house, or in pounds. *Britt.* c. 27. *Dedens age*; within age. *Id.* c. 34.

**DEDI.** Lat. [from *dare*, to give.] I

have given. The operative and proper word of conveyance in ancient charters of feoffment, and deeds of gift and grant. *Co. Litt.* 9 a. 2 *Bl. Com.* 310, 316. *Bract.* fol. 34 b. The present *do* (I give) was also used, and may have been the more ancient form. Bracton employs this frequently in his illustrations. *Bract.* fol. 17, *et passim*. The future *dabo* (I will give) was used in the Anglo-Saxon grants. 1 *Spence's Chancery*, 44.

*Dedi* and its English equivalent were formerly held to imply a warranty of the title to the land or estate conveyed. *Co. Litt.* 384. 2 *Bl. Com.* 300. 4 *Co.* 81. 5 *Co.* 17. *Perkins*, c. 2. But the law on this point has, in England, been recently altered by statute. See *Give, Gift, Deed*.

**DEDI ET CONCESSI.** L. Lat. I have given and granted. The operative words of conveyance in ancient charters of feoffment, and deeds of gift and grant; the English "*given and granted*" being still the most proper, though not the essential words by which such conveyances are made. 2 *Bl. Com.* 53, 316, 317. 1 *Steph. Com.* 164, 177, 473, 474. *Co. Litt.* 301 b, 384. *Shep. Touch.* 232, and notes.

The clause of which *dedi et concessi* were the emphatic words, was that with which deeds or charters anciently commenced, the form being as follows:—*Sciant presentes et futuri, quod ego, talis, dedi et concessi et hac presenti charta mea confirmavi tali, pro homagio et servitio suo, tantam terram cum pertinentiis in tali villa, &c.*: Know [all] men present and to come, that I, (such a one) have given and granted, and by this my present charter have confirmed to (such a one) for his homage and service, so much land, with the appurtenances, in such a town, &c. *Bract.* fol. 34 b. Nearly the same form is given by Littleton. *Litt.* sect. 372. 2 *Bl. Com.* Appendix, No. I. Sometimes the infinitives *dedisse et concessisse* were used, the meaning in English being the same. In indentures, properly so called, the third person *dedit et concessit*, (has given and granted) was used instead of the first. See *Dedit et concessit*. *Dedi* and *concessi* were sometimes held to have the same effect in substance, and to enure to the same intent as *confirmavi*. *Litt.* sect. 531. *Co. Litt.* 301 b. The three words, however, were usually employed together. See *supra*.

**DEDICERE.** L. Lat. [L. Fr. *dedire*.] In old pleading and practice. To deny. *Cro. Jac.* 343. *Aut dedit aut cognoscit*;

he either denies or acknowledges. *Bract*. fol. 214. *Si petens hoc dedicere non possit*; if the demandant cannot deny this. *Id.* fol. 320 b. See *Stat. Westm.* 2, c. 9.

**DEDIMUS POTESTATEM.** L. Lat. (We have given power.) In English practice. A writ or commission issuing out of chancery, empowering the persons named therein to perform certain acts, as to administer oaths to defendants in chancery and take their answers, to administer oaths of office to justices of the peace, &c. 3 *Bl. Com.* 447. 1 *Id.* 352. Cowell defines it to be "a writ whereby a commission is given to a private man for the speeding of some act appertaining to a judge;" and says the civilians call it *delegatio*. It was anciently allowed for many purposes not now in use, as to make an attorney, to take the acknowledgment of a fine, &c. *Reg. Orig. tabula.* 2 *Bl. Com.* 351.

In the United States, a commission to take testimony is sometimes termed a *dedimus potestatem*. 3 *Cranch's R.* 293. 4 *Wheaton's R.* 508.

**DEDIMUS POTESTATEM DE AT-TORNATO RECIPIENDO.** L. Lat. (We have given the power of receiving an attorney.) In old English practice. The name of a writ or commission from the crown, directed to the judges of a court, authorizing them to receive or admit the attorney of a party: or, in other words, to permit him to appear by attorney. *Reg. Orig.* 22, 123 b, 140 b, 151. These instruments were otherwise termed *letters patent*, and without them a party could not, before the statute of Westminster 2, (cap. 10,) appear in court by attorney. *Gillb. C. Pleas*, 32.

**DEDIRE.** L. Fr. To deny. *Britt.* c. 15. *Dedit*; denied. *L. Fr. Dict.*

**DEDISSE ET CONCESSISSE.** L. Lat. To have given and granted, or [that I] have given and granted. Operative words in ancient charters of feoffment and deeds of grant, the whole commencement running thus: — *Omnibus Christi fidelibus ad quos presentes literæ indentatæ pervenerint, A. de B. salutem in Domino sempiternam. Sciatis me dedisse, concessisse, et hac præ-senti carta mea indentata confirmasse C. de D. talem terram, &c.* To all christian people [the faithful of Christ] to whom these presents indented shall come, A. of B. sends greeting in our Lord everlasting. Know ye me to have given [that I have given] granted; and by this, my present deed indented, confirmed to C. of D. such lands,

&c. *Litt. sect.* 372. This seems to have been a more frequent construction than that with *quod* and *dedi*, in the first person preterite. 1 *Reeves' Hist.* 91, See *Dedi et concessi*.

**DEDIT ET CONCESSIT.** L. Lat. Hath given and granted. Operative words in ancient charters of feoffment and deeds of grant, where the conveyance was by indenture, the whole running thus: *Hæc indentura, facta inter R. de P. ex una parte, et V. de D. ex altera parte, testatur quod prædictus R. de P. dedit et concessit, et hac præ-senti carta indentata confirmavit præfato V. de D. talem terram, &c.* This indenture, made between R. of P. of the one part, and V. of D. of the other part, witnesseth, that the aforesaid R. of P. hath given and granted, and by this present deed indented hath confirmed to the aforesaid V. of D. such land, &c. *Litt. sect.* 371.

**DEDITITII.** Lat. An inferior kind of freedmen (*libertinorum*) at one time recognized by the Roman law, being introduced by the *Lex Ælia Sentia*, but long disused in the time of Justinian, and expressly abolished by him. *Inst.* 1. 5. 3. *Id.* 3. 8. 4. *Heinecc. Elem. Jur. Civ. lib.* 1, tit. 5, § 109. *Calvin Lex. Jurid.*

**DEDUCERE.** Lat. To bring. *Deducere rem in judicium*; to bring a thing into court; to make it the subject of judicial investigation. *Bract.* fol. 283 b, 376, 431. This expression is taken from the civil law. *Calvin Lex. Jurid.*

**DEDURE, Deduire.** L. Fr. [from Lat. *deducere*, q. v.] To bring. *Dedust, deduist*; brought. *Kelham.* *Deduces*; brought. *Britt.* fol. 2 b.

**DEED.** [L. Lat. *factum, charta*; L. Fr. *fait.*] A writing sealed and delivered by the parties. 2 *Bl. Com.* 295. 1 *Steph. Com.* 446. — A writing or instrument written on paper or parchment, sealed and delivered, to prove and testify the agreement of the party whose deed it is, to the things contained in the deed. *Termes de la ley.* *Shep. Touch.* 50. — An instrument on parchment or paper comprehending a contract or bargain between party and party, and consisting of three things; writing, sealing and delivery. *Co. Litt.* 171 b. *Blount.* *Wharton's Lex.* — A writing [on parchment or paper and under seal,] containing a conveyance, bargain, contract, covenants, or matter of agreement between two or more. *Shep. Touch.* 50. *Whishaw.*

— An instrument in writing upon paper or parchment, between parties able to contract, and duly sealed and delivered. 4 *Kent's Com.* 452. Anciently called a charter, (*charta*, or *carta*, q. v.) and termed a deed, *κατ' εἶδη*, because it is the most solemn and authentic act that a man can possibly perform with relation to the disposal of his property. 2 *Bl. Com.* 295. 1 *Steph. Com.* 446. See *U. S. Dig.* and *Supplement*, Deed. See *Factum, Fait, Scriptum, Writing*.

A deed is said to consist of three principal points, (without which it is no perfect deed to bind the parties,) namely, writing, sealing, and delivery. *Termes de la ley*. Of these, *sealing* constitutes the principal distinction between a deed and any other contract. *Smith on Contracts*, 6, 7. *Shep. Touch.* (by Preston,) 56. Hence the rule that every agreement put in writing, *sealed*, and delivered becomes a deed. *Id.* 51. Hence, also, in pleading, a bond is denominated a deed. The term, however, is usually confined in its application to conveyances of *real estate*, or of some *interest* therein, such as feoffments, gifts, grants, bargains and sales, leases, releases and confirmations, &c. *Shep. Touch.* 51. 1 *Steph. Com.* 446, 466. Other instruments under seal are properly only *quasi* deeds. *Shep. Touch.* (by Preston,) *ub. sup.* A mortgage is properly a deed, although in practice it is considered a distinct species of conveyance. See 4 *Howard's R.* 37. Whether it is essential that a deed be *signed* as well as *sealed*, seems to be still a question in English law. According to Sir W. Blackstone, signing seems to be now as necessary as sealing; but signing is not one of the necessary incidents to a deed enumerated by Lord Coke, and Mr. Preston and other modern writers hold it clear that no signature is necessary. 2 *Bl. Com.* 306. *Co. Litt.* 35 b. *Shep. Touch.* (by Preston,) 56. *Sugden on Powers*, 304. The question recently arose in England but was not determined. 2 *Q. B.* 580. *Smith on Contracts*, 5, note. Mr. Smith observes that "it is probable that the signature of deeds will be ultimately held requisite, whenever their subject matter falls within statutes which expressly require it; but that in other cases sealing and delivery are alone essential." *Id. ibid.* In American law it appears to be the prevailing doctrine that a deed must be *signed* as well as *sealed*. 4 *Kent's Com.* 450, *et seq.* 2 *Hilliard's Real Prop.* 279.

#### DEED INDENTED, or INDENTURE.

[L. Lat. *carta indentata*, or *indentura*; L. Fr. *fait enlent*.] In conveyancing. A deed

executed or purporting to be executed in *parts*, between two or more parties, and distinguished by having the edge of the paper or parchment on which it is written, *indented* or *cut* at the top in a particular manner. This was formerly done at the top or side, in a line resembling the teeth (*dentes*) of a saw; a formality derived from the ancient practice of dividing chirographs, (or deeds in parts;) but the cutting is now made either in a waving line, or more commonly by notching or nicking the paper at the edge. 2 *Bl. Com.* 295, 296. *Litt. sect.* 370. *Smith on Contracts*, 12. This formality of *indenting* is, however, very frequently omitted, although the term *indenture* itself is retained in daily use. See *Indenture*.

DEED POLL. [L. Lat. *charta de una parte*, *factum simplex*; L. Fr. *fait polle*.] In conveyancing. A deed of one part, or executed by one party only, (instead of between parties, and in two or more parts) and distinguished from an indenture by having the edge of the parchment or paper on which it is written, *cut even* (or *polled*, as it was anciently termed,) that is, in a straight line, or plain, without being indented. *Litt. sect.* 370. *Co. Litt.* 229 a. *Shep. Touch.* 50. This distinction, however, though once peculiar and essential, has in modern times become of comparative insignificance, in consequence of the disuse of the formality of *indenting* the other description of deeds. See *Deed indented*.

A deed poll properly is made in the first person, and commences with that formula of address to all mankind so common in ancient written instruments. "Know all men, &c., that I, &c., have given," &c. The forms given in Bracton and Britton, as examples of charters (as deeds were once called) are of this description. *Sciatis presentes et futuri, quod ego, &c. Bract.* fol. 34 b. *Sachent a tous ceux, &c., que jeo, &c. Britt.* c. 39. But a deed poll might be made in the third person. *Shep. Touch.* 51. And on the other hand an indenture might be made in the first. *Litt. sect.* 372. In some of the United States, the ordinary mode of conveyance is by deed poll.

A deed poll is considered in England as a deed made between the party or parties who executed it on the one side, and all the world on the other, or rather as a declaration, addressed to all mankind, of what the party executing it has done, so that any person may take a right of action on a covenant contained in a deed poll. But an indenture is made only between the persons named as parties to it, so that an

indenture between A., B. and C. containing a covenant by A. with D., would not [formerly] give a right of action to D. So, a stranger to an indenture could not take a release under it, or an estate unless by way of remainder or through the statute of uses. Now a stranger may take immediately under an indenture, and a deed may have the effect of an indenture without being actually indented. 1 *Spence's Chancery*, 160.

In the United States a deed poll is held to be the deed of the party making it, and concludes him only; but an indenture is the deed of both parties, and concludes both. 2 *Hill's* (S. C.) *R.* 439. And see 2 *Hilliard's Real Prop.* 265, *et seq.*

**DEEDS TO LEAD AND DECLARE USES.** In old conveyancing. A species of deed incident to the conveyances by fine and recovery, by which the latter were directed to operate to certain particular uses. If these deeds were made previous to the fine or recovery, they were called deeds to *lead* the uses; if subsequent, deeds to *declare* them. 2 *Bl. Com.* 363. 1 *Steph. Com.* 529. See on Abstracts, 302.

**DEEMSTER, Demster.** [from Sax. *de-ma*, a judge, or *dom*, judgment.] A kind of judges, [two judges, according to Spelman,] in the Isle of Man, who decided all controversies without process, writings or any charge. *Cowell. Blount. Spelman.*

**DEFAIRE, Defere.** L. Fr. To undo; to reverse or set aside; to defeat; [Lat. *infectum reddere.*] *Kelham.*

**DEFALTA.** L. Lat. In old English practice. Default. *Bract. lib. 5, tr. 3. De defaultis*; fol. 364 b. *Procedatur contra ipsum ad defaultam*; proceedings shall be had against him to default. *Id.* fol. 330. *Compensari debeat defalta cum defalta*; default ought to be set off against default. *Id. ibid.* *Capiatur assisa per defaultam*; the assise shall be taken by default. *Id.* fol. 255. *Stat. Marlbr. c. 13. Defaltam facere*; to make default. *Bract.* fol. 360 b, 363, 386 b. *Defaltam sanare*; to cure a default. *Id.* fol. 299 b, 367 b, 386 b.

**DEFAMATION.** [L. Lat. *defamatio, diffamatio*; from *fama*, reputation.] The taking from one's reputation. The offence of injuring a person's character, fame or reputation, either by writing or by words. Written defamation is otherwise termed libel, and oral defamation, *slander*. *Cooke's Law of Defamation*, 1. See *Libel, Slander.*

**DEFAMATOR.** L. Lat. A defamer. *Famosus defamator*; a libeller. 5 *Co.* 126.

**DEFAMES.** L. Fr. Infamous. *Britt.* c. 15.

**DEFAULT.** [L. Lat. *defalta, defectus*; L. Fr. *default.*] In practice. Omission; neglect or failure. When a defendant in an action at law omits to plead within the time allowed him for that purpose, or fails to appear on the trial, he is said to *make default*, and the judgment entered in the former case is technically called a judgment *by default*. 3 *Bl. Com.* 296, 396. 1 *Tidd's Pr.* 562. See *Defalta*.

**DEFAUTE, Defaut.** L. Fr. Default. *Si il face defaute, si soit il et ses plegges de suer, en la mercy*; if he make default, he and his pledges to prosecute shall be in mercy. *Britt.* c. 46.

**DEFEASANCE, Defeazance.** [L. Lat. *defeisantia*; from Fr. *defaire*, to undo or defeat.] In conveyancing. A collateral deed made at the same time with a feoffment or other conveyance, containing certain conditions, upon the performance of which the estate then created may be *defeated* or totally undone. 2 *Bl. Com.* 327. *Co. Litt.* 236, 237. In this manner mortgages were, in former times, usually made; the mortgagor enfeoffing the mortgagee, and he at the same time executing a deed of defeasance, whereby the feoffment was rendered void, on repayment of the money borrowed at a certain day. 2 *Bl. Com.* 327. Defeasances are now of rare occurrence, the practice in modern times being to include in the same deed, [the mortgage] both the conveyance of the land to the alienee, and the conditions, if any, to which it is to be subject, and by which its effect may be defeated. 1 *Steph. Com.* 487. See 4 *Kent's Com.* 141, 142, and notes.

An instrument accompanying a bond, recognizance or judgment, containing a condition which, when performed, *defeats* or undoes it. 2 *Bl. Com.* 342. *Co. Litt.* 236, 237. A defeasance may also be *endorsed* on a bond, but the modern practice is to make the condition a part of the bond itself. See *Bond*.

**DEFECTUS.** Lat. [from *deficere*, to fail, to want, to be deficient.] In old practice. Defect, deficiency, imperfection; failure, default; want. *Defectus exitus*; default of issue. *Towns. Pl.* 23. *Propter defectum*; on account of deficiency; for

want of certain qualifications. See *Propriet defectum*.

**DEFENCE.** [L. Lat. *defensio*; L. Fr. *defence*, *defense*, from *defendre*, to deny.] In pleading. A denial, by the defendant in an action at law, of the truth or validity of the plaintiff's complaint. 3 *Bl. Com.* 296. A formula by which pleas were anciently in almost all actions required to be prefaced. It was of two kinds, full defence and half defence. The latter is still retained, and is in these words: "And the said defendant, by — his attorney, comes and defends the wrong (or force) and injury when, &c." *Steph. Pl.* (Am. ed. 1824,) ch. ii. sect. vii. rule v. 3 *Reeves' Hist. Eng. Law*, 428. *Termes de la ley*. See *Defend*, *Full Defence*, *Half Defence*. The late pleading rules of the English courts have dispensed with this ancient formula, although they have not expressly prohibited its use.

**DEFENCE, Defense.** L. Fr. In old statutes. Prohibition; denial or refusal. *Encontre le defence et le commandement le roy*; against the prohibition and commandment of the king. *Stat. Westm.* 1, c. 1. See *Fence month*, *Defensum*.

A state of severalty, or of several or exclusive occupancy; a state of enclosure, [L. Lat. *defensum*.] See *Defensum*, *In defenso*.

**DEFENCE**, in modern practice, includes all the proceedings on the part of a defendant to embarrass, delay, or defeat a plaintiff's action.

In a stricter sense, defence is used to denote the answer made by the defendant to the plaintiff's action, by demurrer or plea at law, or answer in equity. This is the meaning of the term in Scotch law. *Ersk. Inst.* b. 4, tit. 1, § 66.

**DEFEND.** [L. Fr. *defendre*; L. Lat. *defendere*.] In pleading. To deny. The words "comes and defends," (*venit et defendit*,) have formed a part of a defendant's plea in an action at law from the earliest times, occurring in the forms used in the reign of King John. *Plac. Abbrev.* 27 *Leic. rot. ii. temp. Johan.* cited in *Steph. Pl.* Appendix, Note, (79) Am. ed. 1824. See *Comes, Defence*. The effect of the expression "defends" is merely that the defendant denies the right of the plaintiff, or the force or wrong charged. *Steph. Pl.* ch. ii. sect. vii. rule v.

**DEFEND.** In modern practice. To op-

pose or resist a claim at law; to contest a suit.

**DEFEND.** [L. Fr. *defendre*, *defender*.] In old statutes and treatises. To prohibit or forbid. *LL. Edw. Conf.* c. 37. *Stat. Westm.* 1, c. 1, 5. *Stat. 5 Ric.* II. c. 7. "It is defended [forbidden] by law to dis-train in the highway." *Co. Litt.* 161. *Cowell*.

Chaucer uses this word in the same sense:

Where can you say in any manner age,  
That ever God defended marriage?  
*Prolog. Wife of Bath.*

**DEFEND** is used in conveyancing in its popular sense; viz. in clauses of warranty at the conclusion of deeds,—“shall and will warrant, and forever defend.” See *Defendemus*.

**DEFENDANT, Defendaunt.** L. Fr. & Eng. [L. Lat. *defendens*, and sometimes *defensor*; L. Fr. *defendour*, from *defendre*, to deny or defend.] In pleading and practice. The party against whom an action at law or in equity is brought; the party denying, (in the ancient sense,) opposing, resisting or contesting the action. See *Defend*. Called in Scotch practice, the *defender*. Defendant, strictly, is the proper title of the party sued in a personal action; such party in a real action being termed the *tenant*. *Termes de la ley*. In modern practice, however, this distinction is, in a great degree, disregarded. See *Tenant*.

**DEFENDAUNT.** L. Fr. In old practice. Defending; a defending party; the party against whom an action, whether civil or criminal, was instituted. The party accused in the old criminal proceeding by appeal was called *defendaunt* and *defendour*. *Et quant al defense, se purra le defendaunt puis apres defendre en ceste manere*; and as to the defence, the defendant may afterwards defend himself in this manner. *Britt.* c. 22.

**DEFENDEMUS.** L. Lat. [from *defendere*, q. v.] (We will defend.) In old conveyancing. An ordinary word anciently used in feoffments or gifts, by which the donor and his heirs were bound to defend the donee against any attempt to lay any incumbrance or servitude on the thing granted, other than what was contained in the deed or donation. *Bract.* fol. 37 b. *Termes de la ley*. It was used in connection with *warrantizabimus*, (*Id. ibid.*), and the same two words in English are still retained in con-

nexion in the clause with which a warranty deed terminates ;—"shall and will *warrant* and forever *defend*." *Defendemus*, however, had not of itself the effect of a warranty. *Litt.* sect. 733.

DEFENDENDO. See *Se defendendo*.

DEFENDER. In Scotch law. A defendant.

DEFENDER, *Defendre*. L. Fr. In old pleading. To deny. *Perez que cy est defend toutes felonies* ; Peter, who is here, defends all felonies. *Britt.* c. 22.

In old statutes. To prohibit or forbid. *Et le roy defende et commande* ; and the king forbids and commands. *Stat. Westm.* 1, c. 1. *Cy defende le roy* ; the king hereby commands. *Id.* c. 5. *Defendons* ; we enjoin or command. *Britt.* fol. 3.

To defend ; to keep or protect. *Il le tua en defendant nostre pees* ; he killed him in keeping our peace. *Britt.* c. 24. *Soy defendeant* ; in self defence. *Id.* *ibid.*

DEFENDERE. L. Lat. In old pleading. To defend or deny. *Petrus venit et defendit cartam, quod nunquam facta fuit per Petrum de Goldington* ; Peter comes and defends [denies] the charter, that it was never made by Peter de Goldington. *Placit. Abbrev.* cited *Steph. Pl.* (Am. ed. 1824), Appendix, Note (79). *Venit et defendit omnem feloniam* ; comes and defends all the felony. *Bract.* fol. 138 b. *Veniunt et defendunt vim et injuriam* ; come and defend the force and injury. *Id.* fol. 57 b. *Si negaverit et crimen defenderit* ; if he deny and defend the crime or accusation. *Id.* fol. 137. *Si dicat, defendo donum et chartam, tunc oportet tenentem probare utrunque* ; if he say "I defend the gift and the charter," then the tenant must prove both. *Id.* fol. 214 b.

To defend, in the modern sense. *Defendere se per corpus suum* ; to defend himself by his own body ; to offer the duel or combat as a legal trial. *Bract.* fol. 133 b. *Se defendat per corpus, vel per patriam* ; he may defend himself by his body or by the country. *Id.* *ibid.* See *Id.* fol. 146, 151.

DEFENDERE. L. Lat. In old statutes. To appropriate to one's exclusive use ; to fence in or enclose ; to fence out or exclude others. *Nulla riparia defendantur de cætero nisi illa quæ fuerunt in defenso tempore Henrici regis, &c.* ; no banks shall be defended from henceforth, but such as were in defence in the time of king Henry, &c. *Magna Charta*, c. 16. That is, no owner

of the banks of rivers shall so appropriate or keep the rivers several to him, to defend or bar others either to have passage or fish there, &c. 2 *Inst.* 30. See *Defensum*.

DEFENDOUR. L. Fr. A defender or defendant ; the party accused in an appeal. *Britt.* c. 22.

DEFENDRE, *Defender*. L. Fr. To defend or protect. *Garraunter, acquiter et defendre son tenant* ; to warrant, acquit and defend his tenant. *Britt.* c. 68. See *Id.* c. 75. *Et quant al defense, se purra le defendeant puis apres defendre en ceste manere* ; and as to the defence, the defendant may afterwards defend himself in this manner. *Britt.* c. 22. *Pursuer et defendre* ; to prosecute and defend. *Id.* c. 21. See *Defender*.

DEFENSA. L. Lat. In old English law. A park or place fenced in for deer, and defended as a property and peculiar for that use and service. *Cowell*.

DEFENSABLE. L. Fr. In old pleading. Expressive of defence ; in form of defence. *Se defendent par motz defensables* ; defend themselves by words of defence. *Britt.* c. 59.

DEFENSE, *Defens*. L. Fr. Defence. *Britt.* c. 22.

DEFENSIO, *Defentio*. L. Lat. Defence. *Feoffatus habebit defensionem suam in manu sua* ; the feoffee will have his own defence in his own hand. *Bract.* fol. 21 b. *Defensio contra sectam* ; defence against the suit. *Id.* fol. 290 b. *Defensiones* ; defences. *Id.* fol. 258 b.

In old statutes. Prohibition. *Statutum de defensione portandi arma, &c.* ; the statute of prohibition of bearing arms, &c. (7 Edw. I.) *Cowell*.

DEFENSIVE ALLEGATION. In English ecclesiastical law. A species of pleading, where the defendant, instead of denying the plaintiff's charge upon oath, has any circumstances to offer in his defence. This entitles him, in his turn, to the plaintiff's answer upon oath, upon which he may proceed to proofs as well as his antagonist. 3 *Bl. Com.* 100. 3 *Steph. Com.* 720. *Halifax Anal.* b. 3, c. 11, num. 21.

DEFENSO. See *Defensum*, *In defenso*.

DEFENSOR. Lat. [from *defendere*, q. v.] In the civil law. A defender ; one who



fends another in court. A species of advocate, who, without commission, undertook the defence of a *reus* (defendant or accused person) that was absent. *Calvin Lex. Jurid.*

A municipal magistrate, having certain judicial powers. *Id. Inst.* 1. 20. 5. *Spelman.*

A guardian, (*tutor, vel curator.*) *Calv. Lex. Jurid.*

In early European law. A protector or guardian. *LL. Longobard.* lib. 1, tit. 30, l. 13. *Spelman.*

In old English law. The party accused in an appeal; the defender or defendant. *Bract.* fol. 141 b.

The party warranting another's title in a real action; otherwise called *warantus*. *Id.* fol. 257 b.

In the canon law. The protector or advocate of a church, (*defensor ecclesiæ.*) *Spelman.* See *Advocatus*.

A provincial officer having charge of the patrimony of the church. *Spelman.*

An officer having charge of the temporalities of a parish church. Hence churchwarden, (*gardianus ecclesiæ.*) *Id.*

**DEFENSUM.** L. Lat. In old English law. An enclosure, or any fenced ground. 2 *Mon. Angl.* 114. 3 *Id.* 306. *Inclusum et positum in defensum*; enclosed and put in defence or fence. *Bract.* fol. 228.

A part of an open field, appropriated to a particular use, as for hay, which was hence said to be *in defenso*. *Cowell.*

A state of several occupancy or appropriation. *Magna Charta*, c. 16.

Defence, in the old sense of prohibition; a state of prohibition, or in which the use of a thing is prohibited by law. *Stat. Westm.* 2, c. 47. See *In defenso*.

**DEFERE.** L. Fr. To undo; to defeat; to set aside or reverse. *Kelham.*

**DEFINIRE.** Lat. [from *de*, and *finire*, from *finis*, a bound or limit.] In the civil law. To define; to explain a thing, (*quid res sit explicare.*) *Calv. Lex. Jurid.*

To lay down a rule, (*pro regula aliquid statuere.*) *Id.*

**DEFINITIO.** Lat. [from *definire*, q. v.] In the civil law. Definition, explanation, exposition; the explanation of a thing, including, as within a circumscribed line or limit, (*finis*,) everything pertaining to it.\* *Calv. Lex. Jurid.*

The establishment or laying down of a general rule. *Id.* *Omnis definitio in jure civili periculosa est.* All definition in the

civil law is hazardous. *Dig.* 50. 17. 202. This maxim, otherwise expressed, *Omnis definitio in lege periculosa*, is frequently cited as illustrative of the difficulties attending definition in its ordinary modern acceptance, viz. the explanation of the meaning of words. *Swinburne on Wills*, part 1, sect. 3. But according to Calvin, it is not so difficult to define a thing exactly, as it is rare to be able to lay down a rule of law in terms at once so comprehensive and precise as to be proof against criticism. *Neque tam est difficile rem aliquam in jure civili exacte definire, quam est rarum regulam ex legibus colligere quæ nulla in parte infirmari queat.* *Calv. ub. sup.* See *Swinburne, ub. sup. in notis.*

A general rule or canon of law. *Calv. Lex. Jurid.*

**DEFINITIVE SENTENCE.** [L. Lat. *diffinitiva sententia.*] The final judgment, decree or sentence of an ecclesiastical court; the sentence by which a principal cause is determined, as distinguished from an interlocutory sentence, which is on some incident question arising from the principal cause. 3 *Bl. Com.* 101. *Hallifax Anal.* b. 3, c. 9, num. 40. *Bract.* fol. 405 b.

**DEFONTAINES.** The oldest writer on the law of France. *Esprit des Lois*, liv. 28, c. 38. Pierre Desfontaines published, about the year 1253, a work on the French law of custom, comparing it with the Roman law. 1 *Mackeld. Civ. Law*, 70, § 85. This work, which the author called his *Conseil*, contains in particular an account of the customs of the country of Vermandois. 1 *Robertson's Charles V.*, Appendix, Note xxx. *Esprit des Lois, ub. sup.*

**DEFORCE.** [L. Lat. *deforciare*; L. Fr. *deforcer.*] In English law. To withhold wrongfully the possession of lands; to keep another wrongfully out of possession of a freehold.\* 3 *Bl. Com.* 172. See *Deforcement*.

**DEFORCEMENT.** [L. Lat. *deforciammentum.*] In English law. A keeping out by force or wrong; a wrongful withholding of lands or tenements to which another has a right; a species of ouster, or privation of the freehold.\* *Termes de la ley*, voc. *Deforcer*. 3 *Bl. Com.* 172.

In its most extensive sense, this is *nomen generalissimum*, signifying the withholding of any lands or tenements to which another has a right, and includes as well an abatement, an intrusion, a disseisin, or a discontinuance, as any other species of wrong

whatsoever, whereby he that has right to the freehold is kept out of possession. *Co. Litt.* 277 b. 3 *Bl. Com. ub. sup.* But, as contradistinguished from these injuries, it is only such a detainer of the freehold from him that has the right of property, but never had any possession under that right, as falls within none of them. *Id.* 172, 173. 3 *Steph. Com.* 483. 2 *Crabb's Real Prop.* 1064, 1065, § 2457. See *Ouster, Abatement, Disseisin, Intrusion.*

**DEFORCEMENT.** In Scotch law. The opposition or resistance made to messengers or other public officers while they are actually engaged in the exercise of their offices. *Ersk. Inst.* b. 4, tit. 4, § 32.

**DEFORCEOR.** [L. Fr. *deforceour*; L. Lat. *deforcior*, *deforcians*.] In English law. One who deforces another, or keeps him out of his freehold. *Termes de la ley.* See *Deforce, Deforcement.*

**DEFORCER.** L. Fr. To deforce. *Litt. sect.* 614.

**DEFORCIANS, Defortians.** L. Lat. [from *deforcicare*, q. v.] A deforciant. *Reg. Orig.* 171. *Reg. Jud.* 6.

**DEFORCIANT.** [L. Lat. *deforcians, defortians*.] In English law and practice. One who deforces another; a deforceor, (q. v.)

The person against whom the fictitious action of fine was brought. 3 *Bl. Com.* 174. The defendant in the assise of daren presentment. *Bract.* fol. 238, 239, 240.

**DEFORCIARE, Defortiare, Deforceare.** L. Lat. In old English practice. To deforce; to withhold lands or tenements from the right owner. *Bract.* fol. 238 *et seq. Fleta*, lib. 5, c. 11. Said by Lord Coke to be a word of art which cannot be expressed by any other word. *Co. Litt.* 331 b.

*Deforciat, Deforceat*; he deforces. *Quod ei deforceat*; that he deforces him or her. *Reg. Orig.* 170. *Bract.* fol. 372 b. *Quam talis ei deforciat*; of which such a one deforces him. *Id.* fol. 328.

*Deforcior*; a deforceor. *Stat. Marlbr.* c. 7.

**DEFORCIATIO.** L. Lat. In old English law. A distress, dstraint or seizure of goods for satisfaction of a lawful debt. *Kennett's Par. Ant.* 293. *Cowell.*

**DEFORE.** L. Fr. To oppose or obstruct. *Kelham.*

**DEFUER.** L. Fr. To flee from; to run away; to elope. *Kelham.* *Defuiaunt*; running away. *Id.* *Defuont*; run away. *Id.* *Après ceo que el avera defuy son baron*; after she shall have eloped from her husband. *Britt.* c. 42.

**DEFUSTARE.** L. Lat. To beat with a club or stick; (*fustigare*.) *Spelman.*

**DEGAGER.** L. Fr. To give security; to deliver on gage or security. *L. Fr. Dict.* *Kelham.*

**DEGASTER.** L. Fr. To waste. *De-gast, degaste, degata*; wasted, destroyed. *L. Fr. Dict.* *Kelham.*

**DEGRADATION.** [Lat. *degradatio*, from *de*, priv., and *gradus*, rank.] In English law. Deprivation of dignity or rank; the depriving a peer of his nobility, or a clergyman of his holy orders and ecclesiastical distinctions. 1 *Bl. Com.* 402. *Selden's Tit. of Honor*, 787. *Staundf. Pl. Cor.* 130, 138. Anciently, the peculiar punishment of a clerk (*clericus*), convicted of a crime. *Bract.* fol. 123 b. Called, also, *disgrading*. *Cowell.* *Bkount.*

**DEGREE, Degre.** L. Fr. & Eng. [Lat. *gradus*; Gr. *βαθμος*.] A step. A term employed in the law of descent to denote the distance from one person to another in the lines of consanguinity, the nearest relatives being always separated from each other by one degree.\* *Gradus est distantia cognatorum.* *Heinecc. El. Jur. Civ.* lib. 1, tit. 10, § 153. A person added to a person in the line of consanguinity makes a degree. Take the son and add the father, it is one degree. Take away one of the number of persons, and you have the number of degrees. If there be four persons, it is the third degree, if five, the fourth, &c. *Co. Litt.* 23 b. See *Gradus*.

*Le primer degree avalaunt*; the first degree descending. *Britt.* c. 119. *Les autres degres plus hauts*; the other higher degrees. *Id. ibid.* *De gree en degre*; degree by degree, step by step, from one degree or step to another. *Id. per tot.* *Degree pleyin*; a full degree; a degree occupied by a person. *Id.* *Degre voyde*; a vacant or empty degree, (*gradus vacuus*.) *Id.* *Kelham* translates this last expression, "a void space;" but it obviously means a degree unoccupied by a person, or made vacant by death. The figures or diagrams used in the old books to represent succession, descent or relationship by lines right or direct, and transverse, collateral, or ob-

lique, are frequently in the form of a series of *steps* upward and downward, supposed to be filled or occupied by *persons*. See *Gradus, Linea*.

DEGUERPYS. L. Fr. Abandoned. *Kelham*.

DEHORS. L. Fr. Out of; without; beyond; foreign to; unconnected with. *Dehors* the record; foreign to the record. 2 *Bl. Com.* 387. See *Hors*.

DEI GRATIA. Lat. By the grace of God. An expression used in the titles of sovereigns, and considered as one of the prerogatives of royalty, (*propria jura majestatis*), although anciently a part of the titles of inferior officers and magistrates, ecclesiastical and civil. *Spelman*.

DEI JUDICIUM. L. Lat. The judgment of God. The Saxon trial by ordeal. See *Judicium Dei*.

DEINS, *Deinz, Dans, Dedens*. L. Fr. Within. *Deins* age; within age; under age. *Litt. sect.* 406. *Deins le quater meres*; within the four seas. *Stat. Westm.* 1, c. 44. *Stat. Modus Lev. Fines*.

DEIT. L. Fr. Owes; ought; owing. *Kelham*. *Deites*; debts. *Id.* See *Doit*.

DEIVER. L. Fr. To owe; ought. *Kelham*.

DEJECTER. L. Fr. [from Lat. *dejacere*, q. v.] To cast off, or out; to throw down. *L. Fr. Dict.* *Kelham*.

DEJICERE. Lat. In the civil law. To eject or cast out; to dispossess or deprive of possession. *Dig.* 43. 16. 1. *Inst.* 4. 15. 6. This term is used by Bracton indifferently with the more modern *ejicere*. *Bract. fol.* 166, 166 b.

*Dejectus*; ejected. *Dig. ub. sup. Bract. ub. sup.*

DEL BIEN ESTRE. L. Fr. [L. Lat. *de bene esse*.] In old English practice. Of well being; of form. *Britt. c.* 39. See *De bene esse*.

DEL CREDERE. Ital. (Of belief, trust or warranty.) In mercantile law. A term used to denote the agreement by which an agent or factor, in consideration of an additional premium or commission, when he sells goods on credit, engages to insure, warrant or guarantee to his princi-

pal the solvency of the purchaser. *Paley on Agency*, 41. *Russell on Factors*, 2. The additional commission thus given is called a *del credere* commission. 6 *Bro. P. C.* 287. 2 *Steph. Com.* 128. A *del credere* engagement is now settled to be that of a surety or guarantor, the factor becoming liable only in case of the default of the purchaser. 2 *Kent's Com.* 625, and note. *Story on Agency*, § 33, and note.

DEL TEMPS DOUNT MEMORY NE COURT. L. Fr. From time whereof memory runneth not. *Britt. c.* 86.

DELATIO. Lat. [from *deferre* to accuse or denounce.] In the civil law. An accusation or information. *Calvin's Lex. Jurid.*

DELATURA. L. Lat. In old English law. An accusation; the reward of an informer. *LL. Hen.* 1. c. 46. *LL. Inæ*, c. 20, *apud Brompton*. *Whishaw*.

DELECTUS PERSONÆ. Lat. The choice of a person. A term applied, in the law of partnership, to the right of a partner to choose or determine what persons shall be introduced into the firm as new partners. *Story on Partn.* §§ 5, 195.

DELEGARE. Lat. In old English law. To assign to another; to transfer a duty or power; to appoint a substitute; to depute or commission; to delegate.\* *Bract. fol.* 108 b.

In the civil law. To substitute another in one's place as a debtor. *Delegare est vice suū alium reum dare creditori vel cui jusserit*. To delegate is to give to a creditor, or to him whom the creditor appoints, another person in one's place as a debtor. *Dig.* 46. 2. 11. See *Delegation*.

DELEGATION. [Lat. *delegatio*, from *delegare*, q. v.] In the civil law. The changing or substitution of one debtor for another, by which the obligation which lay on the first debtor is discharged; a species of novation, (q. v.) *Ersk. Inst.* b. 3, tit. 4, § 22. Delegation is novation affected by the intervention of another person whom the debtor, in order to be liberated from his creditor, gives to such creditor, or to him whom the creditor appoints; and such person so given becomes obliged to the creditor in the place of the original debtor. *Burge on Suretyship*, 173. See *Civ. Code of Louis.* art. 2188.

DELEGATUS, *Delegata*. Lat. [from

*delegare*, q. v.] Delegated, deputed, commissioned; appointed to act for another as delegate, deputy or agent. See *infra*.

Transferred or assigned, as a power or authority. See *infra*.

**Delegatus non potest delegare.** A delegate cannot delegate; an agent cannot delegate his functions to a sub-agent without the knowledge or consent of the principal: the person to whom an office or duty is delegated cannot lawfully devolve the duty on another, unless he be expressly authorized so to do. *Broom's Max.* 385, and notes. 9 Co. 77. 2 *Steph. Com.* 119, 120. 2 *Kent's Com.* 633. The civil law maxim was *Constat procuratorem alium procuratorem facere non posse*. *Dig.* 49. 1. 4. 5. *Story on Agency*, § 13.

The term *delegatus* is applied by Bracton to the ancient justices in eyre, as possessing a delegated authority or jurisdiction from the king; and he remarks *quod nullus justitiarius a domino rege sic delegatus poterit aliquem sibi subdelegare*. *Bract.* fol. 108 b. This is probably the earliest application of the maxim in English law. See *infra*.

**Delegata potestas non potest delegari.** A delegated power cannot be delegated. 2 *Inst.* 597. *Branch's Princ.* *Broom's Max.* 384. *Story on Agency*, § 13.

Bracton divides jurisdiction, or the power of judging, (*potestas judicandi*) into ordinary, (*ordinaria*), as that of the king, and delegated, (*delegata*), as that of a justice appointed by him, (*sicut justitiarius ab eo constitutus*;) and observes that a justice cannot substitute another justice in his place, (*et non alius a justitiario substituendus, quia justitiarius justitiarium substituere non potest.*) *Bract.* fol. 333 b.

**DELIBERARE.** Lat. In the civil law. To deliberate; to consult; to consider or think upon. *Deliberandi jus*; the right, privilege or benefit of deliberating. A competent time allowed an heir to deliberate whether he would accept or enter upon an inheritance. *Inst.* 2. 19. 5. *Hallifax Anal.* b. 2, c. 6, num. 55. *Ersk. Inst.* b. 3, tit. 8, § 54.

**DELIBERARE.** L. Lat. In old English law. To deliver. *Deliberatur*; is delivered. *Deliberabitur*; shall be delivered. *Bract.* fol. 89 b. *Deliberatum, deliberatus, deliberata*; delivered. *Id.* fol. 76, 154, 157 b.

**DELIBERATIO.** L. Lat. [from *deliberare*, q. v.] In old English law. Delivery. See *Liberatio*.

Acquittal or discharge. *Bract.* fol. 143 b.

**DELICT.** In Scotch law. A species of crime. Delicts are commonly understood of slighter offences which do not affect the public peace so immediately; as petty riots, &c. *Ersk. Inst.* b. 4, tit. 4, § 2. It appears to answer nearly to the English term *misdeemeanour*, and is closely formed from the Lat. *delictum*, (q. v.)

**DELICTO.** See *Delictum*, *Ex delicto*.

**DELICTUM.** Lat. [from *delinquere*, to offend or transgress.] A crime or offence; a violation of law either natural or positive. *Liber homo non amercietur pro parvo delicto, nisi secundum modum illius delicti, et pro magno delicto secundum magnitudinem delicti*; a freeman shall not be amerced for a small offence, unless according to the measure of that offence, and for a great offence according to the greatness of the offence. *Magna Charta*, c. 14. **Excusant aut extenuant delictum in capitalibus quod non operatur idem in civilibus.** That excuses or extenuates an offence in capital cases, which does not operate the same in civil cases. *Bacon's Max.* 36, regula 7. "The offence was deposited with the voyage, and the *delictum* ended with the termination of the cruise." 1 *Kent's Com.* 123. 7 *Wheaton's R.* 283. "The *delictum* is completely done away when the blockade ceases." 1 *Kent's Com.* 152. 6 *Rob. Adm. R.* 387.

A tort or wrong, as distinguished from a contract; a private offence, as distinguished from a crime. The word *delictum* was extensively used in this sense in the civil law, and as a synonyme of *maleficium* (malfeasance.) *Inst.* 4. tit. & pr. *Id.* 3. 14. 2. From this source it appears to have been introduced into the law of England through Bracton. *Ex maleficio vel delicto procedunt injuriæ et transgressiones*; from malfeasance or tort arise injuries and trespasses. *Bract.* fol. 101. *In iis delictis sive maleficiis obligatur ille qui delinquit ei contra quem delinquitur*; in those torts or malfeasances, he who commits the offence is bound to him against whom it is committed, [that is, to make satisfaction.] *Id.* fol. 101 b. *Ex delicto* (q. v.) is still a common term in the law of actions.

Guilt, criminality; fault or blame. **In pari delicto potior est conditio defendentis.** In a case of equal guilt, the condition of the defendant is the better one; where both the parties to a transaction are equally guilty or equally to blame, and one of them institutes legal proceedings against the other, the party proceeded against is in the better position, or has the advantage.\* Lord Mansfield, *Cowp.* 199, 200.

*Delictum*, considered with reference to its derivation (from *delinquere*, q. v.) properly signifies an omission of duty, or neglect to comply with the requisition of the law (*quid prætermisum*.) rather than a positive act in violation of it; but the latter has long been the received meaning.

**DELINQUERE.** Lat. [from *de*, and *linquere*, to leave.] To omit a duty; to neglect or fail to perform a required act. *Calvin Lex. Jurid.* Hence the English *delinquent*.

To offend or transgress. Hence *delictum*, (q. v.)

**DELIVERER.** L. Fr. To deliver. *Britt. fol. 2 b.*

**DELIVERY.** [Lat. *traditio*; L. Lat. *deliberatio*.] In conveyancing. One of the essential requisites to the validity of a deed. 2 *Bl. Com.* 306, 307. This may be either absolute, that is, to the party or grantee himself, or to a third person, to hold till some conditions be performed on the part of the grantee, in which last case it is not delivered as a deed but as an *escrow*; that is, as a scrawl or writing which is not to take effect as a deed till the conditions be performed, and then it is a deed to all intents and purposes. *Id. ibid.* 1 *Steph. Com.* 459, and note. 4 *Kent's Com.* 454. *Smith on Contracts*, 7. 2 *Hilliard's Real Prop.* 282, 287. See *Livery, Sealed and delivered, Traditio, Escrow*.

**DELIVERY.** In the contract of sale. The act by which the seller of a thing transfers it to the hands or possession of the buyer or his agent, or places it within his control or power, or suffers him to have the enjoyment of it.\* Actual or real delivery is the manual transfer of the commodity sold to the vendee. Constructive or symbolical delivery is the transfer of some article which is a symbol or evidence of ownership; such as the delivery of the key of a warehouse containing the goods sold, or of the bill of lading of goods at sea, or of the bill of sale of a vessel at sea.\* *Story on Sales*, §§ 304, 311. 2 *Kent's Com.* 496—505. *Pothier Contr. of Sale*, part 5, ch. 1, sect. 1. A permission given by the seller to the buyer, or to some one sent by him, to carry away the things sold, or to exercise acts of ownership over them, amounts to a delivery. *Id. ibid.*

**DEMAIN, Demaine, Demayne, Demaygne, Demeyne, Demeigne, Demesne.** L. Fr. & Eng. [L. Lat. *demanium, doma-*

*nium, dominicum*.] In old English law. A term used to denote a lord's chief manor place, with the lands thereto belonging, which he and his ancestors had, from time out of mind, kept in their own hands or manual occupation. *Termes de la ley. Blount.* Derived, accordingly, by Lord Coke, from the Fr. *de*, of, and *main*, hand, i. e. manured [mainoured] or received by the hand. Hence *manual* occupation, possession or receipt. *Co. Litt.* 17 a. This derivation, however, is not approved by Spelman, who rejects also the word *demesne* and its etymology, and considers *demain* as derived from the Lat. *dominium*. *Spelman*, voc: *Dominicum*. See *Demesne, Dominicum*.

**DEMAND.** [L. Fr. *demande, demaunde*; L. Lat. *demanda, demandum*; Lat. *petitio, postulatio, postulatum*.] A calling for a thing due or claimed to be due. *Jacob.* — A claim. *Co. Litt.* 291 b. — A thing or amount claimed to be due.

*Demand*, according to Lord Coke, is one of the most comprehensive terms in the law. *Co. Litt.* 291 b. Beardsley, J., 1 *Denio's R.* 257, 261. See *Demandum*. It is of much broader import than *debt*, and embraces rights of action belonging to the debtor beyond those which may appropriately be called debts. Nelson, C. J., 2 *Hill's (N. Y.) R.* 220, 223. A release of all manner of demands is the best release that a man can have, and shall enure most to his advantage. *Litt.* sect. 508. *Termes de la ley.* See 8 *Co.* 153; *Altam's case*.

**DEMANDA.** L. Lat. In old English law. A demand. *Bract.* fol. 17, 35. *Si quis recuperaverit demandam suam*; if one shall recover his demand. *Stat. Westm.* 2, c. 44. See 8 *Co.* 153.

**DEMANDANT.** [L. Lat. *petens*.] In practice. The party suing in a real action; the same as plaintiff, (*querens*) in a personal action. *Litt.* sect. 195. He who is actor in a real action; so called, because he demands (*petit*) lands, &c. *Co. Litt.* 127 b. See *Petens, Peto*.

**DEMANDARE.** L. Lat. In old English practice. To demand. *Towns. Pl.* 63. See *Demanda*.

To order or award; to direct a sentence to be carried into effect. *Judicium executioni demandare*; to order a judgment to be carried into execution; to enforce by execution. *Bract.* fol. 107, 175, 205 b, 303 b. *Latâ sententiâ et executione demandata*; sen-

tence being passed and execution ordered. *Id.* fol. 108 b. The word, in this sense, is derived from the Lat. *mandare*.

To give in charge, as to a jury. *Demandetur* appears to have this sense in the following passage in the Statute of Marlbridge, c. 5: *Et hoc coram justitiariis itinerantibus in suis itineribus, cum opus fuerit, demandetur*. Lord Coke translates it "shall be inquired."

**DEMANDUM.** Lat. In old English law. A demand. This, says Lord Coke, "is a word of art, and, in the understanding of the common law, is of so large an extent as no other one word in the law is, unless it be *clameum*." *Co. Litt.* 291 b. See *Demand*.

**DEMEMBRATION.** In Scotch law. The crime of cutting off a member. *Ersk. Inst.* b. 4, tit. 4, § 50.

**DEMENS.** Lat. [from *de*, priv. and *mens*, mind.] One who is deprived of his mental faculties, or who has lost his mind, (*mente captus*).\* One who does not think of what he does or says; (*qui non cogitat quid agit aut loquitur*.) 4 *Co.* 128; *Beverly's case*. Distinguished by Lord Coke from *amens*, who is a person wholly insane (*qui prorsus insanit*). *Id. ibid.* Calvin also distinguishes *demens* from a madman or lunatic. *Calv. Lex. Jurid.*

**DEMENTERS, Dementiers.** L. Fr. In the mean time; meanwhile. *Kelham*.

**DEMESNE, Demeysne, Demeine, De-meigne.** L. Fr. [Lat. *suius, proprius*.] Own; one's own. *De son tort demesne*, (q. v.); of his own wrong. *De son seignieur demeyne*; of his own lord. *Britt.* c. 38.

**DEMESNE, Demeysne, Demaine, Demain.** L. Fr. & Eng. [L. Lat. *demanium, domanium, dominicum*.] In old European law. Land which a man held originally of himself, as distinguished from that held of a superior lord. *Hottoman in Verb. Feud.* voc. *Dominicum*. *Cowell.* *Allodium*, in contradistinction to *feodum*; absolute property or ownership. 2 *Bl. Com.* 104.

In old English law. Lands wherein a man had *proper dominion or ownership*, as distinguished from the lands which another held of him *in service*. *Co. Litt.* 17 a. *Disseisi de son propre tenement que il avera tenu en demeyne et en severalte*; disseised of his own proper tenement which he shall have held in demesne and in severalty. *Britt.* c. 42. This is one of the proper and origi-

nal significations of the term in English law, and has received much illustration from Bracton, who dwells on the primary distinction between lands held *in demesne*, (*in dominico*), and those held *in service*, (*in servitio*.) *Bract.* fol. 75, 80. The true and essential meaning of *demesne* seems to have been,—land which a man had under his immediate control, either by having it in his actual manual possession, (see next definition,) or, (where it was in the occupation of others,) by having the right to resume possession at pleasure; as was the case with lands held in villeinage, which Bracton calls *quasi dominicum*. *Bract.* fol. 263. *Id.* fol. 98. It was the *lord's own land*, and hence properly called *dominium*, (from *dominus*), in contradistinction to what was held by his *tenants*, and which was, with equal propriety, called *tenementum*, (tenement, or holding.) The latter could not be taken back from the tenant (that is, the free tenant,) as long as he performed the services and had heirs, as it could from a villein, (the tenant having in fact, in such case, himself the *demesne* or *dominium*), but if he committed felony, or died without heir, then the land went back to the lord as an escheat, and the phrase was, *tenementum cadit in dominicum*;—the *tenement* falls or is turned into *demesne*; that is, it went back into the lord's own hands, and was *tenement* no longer, (*revertitur ad capitalem dominum in dominico*.) *Bract.* fol. 81. See *infra*; and see *Dominicum*.

Land which was manually occupied, manured, and possessed for the necessary sustentation, maintenance and support of the lord and his household. *Co. Litt.* 17 a. Land held for the support of one's own table, answering to the English *bordlands*; (*quod quis habet ad mensam suam et proprie, sicut sunt bordlandes, Anglice*.) *Bract.* fol. 263.

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These are the principal significations of the word *demesne*; others will be noticed under *Dominicum*. As to its etymology, there have been various suggestions, viz.: *demesne*, a man's own land; *de main*, that of which he has manual occupation; *domus*, that which is kept for the support of the household. *Co. Litt.* 17 a. All these, together with the word *demesne* itself, are rejected by Spelman, who considers the proper spelling to be *demain*, the French form of the Latin *dominium*, the original word, formed from *dominus*. See *Dominicum*.

Under this head it may be proper to consider the import of the phrase,—“in his demesne as of fee,”—(L. Lat. *in dominico suo et de feodo*;) a phrase of great antiqui-

ty in English law, and still retained as descriptive of the highest estate that a subject can have in land. It formed a part of the old writ of assise of mort d'ancestor, and of the count upon a writ of right, and is thus explained by Sir William Blackstone. "Where a man possesses land merely in his own right, without owing any rent or service to any superior, he is said to be seised thereof absolutely, *in dominico suo*, in his own demesne. But all the lands in England, being holden mediately or immediately of the king, are in the nature of *feodum*, or fee, and hence, in expressing the strongest and highest estate that any subject can have, he is said to be '*seised thereof in his demesne as of fee*.' It is a man's *demesne*, *dominium*, or property, since it belongs to him and his heirs forever; yet this *dominium* property, or demesne, is strictly not absolute or allodial, but qualified or feudal; it is his demesne *as of fee*; that is, it is not purely and simply his own, since it is held of a superior lord, in whom the ultimate property resides." 2 *Bl. Com.* 105.

Mr. Stephen, in his *New Commentaries*, very justly remarks upon the expression of Blackstone in the above passage,—“it is a man's demesne, since it belongs to him and his heirs forever,”—that it assigns no meaning to the words “in his demesne” beyond what would belong to the other words with which they are connected, and substitutes, according to the plan of his work, the following explanation of the phrase under consideration: “Where a man claims an estate in fee simple in possession in a corporeal hereditament, the precise technical expression is as follows: that he is “seised in his demesne as of fee” (*in dominico suo ut de feodo*); the words *in dominico*, or “in his demesne” signifying that he is seised as owner of the land itself, and not merely of the seignior or services, and the words “as of fee” importing that he is seised of an estate of inheritance in fee simple, and also (in reference to the original meaning of the term *fee*) that he is not the absolute or allodial owner, but holds (feudally) of a superior lord.” 1 *Steph. Com.* 220. And in a note on this passage, the same author adds, “there is abundant authority for holding that *dominium* properly signifies the land which the feudal lord retained to his own use for sustentation of his household, as distinguished from what he granted out on services, and that the true sense of seisin in demesne is that given in the text.” *Id. ibid.* note (x). In addition to these remarks, and to the passages cited by the learned serjeant from Fleta and Bracton in support of them, the compiler of this work would venture to

submit the following. *Demesne* does not appear to have ever had in England the sense of allodial estate upon which the explanation of Blackstone is based, and *fee*, so far from being employed to restrain or qualify demesne, seems to have been always employed (where the terms were used together) to give it enlargement. Demesne was frequently applied to mere estates for life; so often, indeed, that Spelman considers it as peculiarly descriptive of that species of estate. *In dominico seisitus dicitur qui tenet terras aut tenementa ad terminum vite*. The term was, in fact, applied to estates both for life and in fee, though not peculiar to either, its proper use being rather to denote the *manner* in which an estate was held, than the duration of it. *Bract.* fol. 263. *Britt.* c. 78. It was applied, (and that without any qualification of *fee*) as often to the estate of a *tenant* as that of a *lord*, which is entirely inconsistent with the idea of its denoting allodial property. *Bract.* fol. 46 b, 263, ¶ 4, 5. A man, according to Bracton, might hold land in demesne, and not in fee, which was the estate of a freeholder, or free tenant for life; and, on the other hand, a man might hold in fee and not in demesne, which was the estate of a chief lord. *Bract.* fol. 263 b, ¶ 6. *Demesne*, in the phrase now under consideration, signifies (as explained under the word, *supra*.) absolute control of property, and *fee*, though implying tenure, serves primarily to mark the duration of the estate, viz. to a man and his heirs. *Bract. ibid.* To be *seised in demesne as of fee*, therefore properly means to have the absolute control of land, (that is, subject to rendering the services due, and saving the rights of termors, or tenants for years,) and to enjoy it as an estate of inheritance, (*ut de feodo*, as of fee.) See *Dominicum*.

This interpretation is derived from the very full exposition of the phrase and its component terms, given by Bracton in treating of the assise of mort d'ancestor in his fourth book, where the whole seems to be summed up in the following sentence: *Et unde ex præmissis colligi potest, quod unus potest esse seysitus de aliqua terra vel redditu in dominico suo ut de feodo, et de libero tenemento simul, vel tantum ut de feodo, vel [et ?] non in dominico, vel tantum ut de libero tenemento et in dominico, non tamen in feodo, sicut dici poterit de illis qui tantum tenent ad vitam, quacunque ratione*. And hence it may be gathered from the premises, that one may be seised of any land or rent in his demesne as of fee, and of freehold at the same time; or only as of fee, or [and ?] not in demesne; or only as of freehold and in

demesne, yet not in fee; as may be said of those who only hold for life, in whatever way. *Bract.* fol. 263 b, 264. The same author takes notice of, and comments on the peculiar expression "*as of fee*," which he says in some cases denoted merely *resemblance* or appearance, in the sense of *quasi* (as it were); in others, actual *verity* or reality, in the sense of *sicut* (even as, just as); being applicable, in the latter sense, only to possession under a *lawful* title; so that "to be seised *as of fee*" meant, in such cases, nothing more in effect than "to be seised in fee." *Bract. ub. sup.*

**DEMESNE LANDS.** [L. Lat. *terræ dominicales*.] In English law. Those lands of a manor not granted out in tenancy, but reserved by the lord for his own use and occupation. Lands set apart and appropriated by the lord for his own private use, as for the supply of his table, and the maintenance of his family; the opposite of *tenemental* lands, (*terræ tenementales*.) Tenancy and demesne, however, were not in every sense the opposites of each other; lands held for years or at will being included among demesne lands, as well as those in the lord's actual possession. *Spelman*, voc. *Dominicum*. 2 *Bl. Com.* 90. See *Demesne*, *Dominicum*.

**DEMESNE LANDS OF THE CROWN.** [L. Lat. *terræ dominicales regis*.] In English law. That share of lands reserved to the crown at the original distribution of landed property; or such as came to it afterwards by forfeitures, or other means. These anciently were very large and extensive, but at present are contracted within a very narrow compass, having been almost entirely granted away to private subjects. 1 *Bl. Com.* 286. 2 *Steph. Com.* 550. See *Crown lands*.

**DEMETTRE.** L. Fr. To let go; to part with; to put away. *Kelham*. *Demette se*; parts with. *Id.*

**DEMEYNE.** L. Fr. Demesne. *En demeyne, si est dit a la difference de ceo que est tenu en seignioury, ou en service, ou en commun ovesque autres*; in demesne is so called to distinguish it from that which is held in seignior, or in service, or in common with others. *Britt.* c. 78.

*Demeynes*; demesne lands. *Car vos demeines sont tielz come nos demeynes*; for your demesnes are such as our demesnes. *Id. ibid.*

**DEMI-MARK, Demy-mark.** [L. Lat.

*dimidia marca*.] In old English practice. Half a mark; a sum of money of the value of six shillings and eight pence, the tender of which was formerly necessary in a writ of right; the effect of such tender being to put the demandant, in the first instance, upon proof of the seisin as stated in his count, that is, to prove that the seisin was in the king's reign there stated. *Roscoe's Real Act.* 216. 2 *Bl. Com.* Appendix, No. I. sect. 6. *F. N. B.* 5 M. *Holt's N. P. Cas.* 657. See *Cowell*, voc. *Half-mark*. According to Mr. Reeves, it was something given to obtain the favor of a trial by the grand assise. 1 *Reeves' Hist.* 429, 430. See *Mark*.

**DEMINUTIO.** See *Diminutio*.

**DEMI-SANGUE, Demy-sangue.** L. Fr. Half-blood. See *Half-blood*.

**DEMISABLE.** That may be demised. 1 *Crabb's Real Prop.* 607, § 768. Demisability; the quality of being demisable. *Id. ibid.*

**DEMISE.** [L. Lat. *demissio, dimissio*, qq. v.] In conveyancing. A conveyance of an estate to another for life, for years or at will; most commonly, for years; a lease. 1 *Steph. Com.* 475. 2 *Crabb's Real Prop.* 230, 233, §§ 1274, 1280. 1 *Penn. St. R.* 126, 129, 131. See *Lease*.

A charter party is sometimes considered as a demise of a ship, (*locatio navis*.) *Abbott on Ship.* [46,] 56. *Id.* [288, 289,] 365, 366.

To **DEMISE.** [L. Lat. *demittere, dimittere*, to send away, or part with.] In conveyancing. To convey or create an estate for years or life; to lease. The usual and operative word in leases:—"have [or hath] granted, *demised*, and to farm let, and by these presents do [or doth] grant, *demise* and to farm let." 2 *Bl. Com.* 317. 1 *Steph. Com.* 476. *Co. Litt.* 45 b. See *Demise*.

**DEMISE OF THE KING, or CROWN.** [L. Lat. *demissio [dimissio] regis vel coronæ*; L. Fr. *demise le roy*.] In English law. The natural dissolution of the sovereign, or the disunion of the king's natural body from his body politic, by which the kingdom is transferred or *demised* to his successor, and the royal dignity becomes vested at once in the latter, without any interregnum or interval. 1 *Bl. Com.* 249. *Plowd.* 177, 234. The word *death* is not used; the principle being that the sovereign never dies. (*Rex nunquam moritur*.) 1 *Bl. Com. ub. sup.*



2 *Steph. Com.* 499. *Broom's Max.* 22. The technical phrase in the old writs is that the king *demised* (or separated) *himself* from the government of his kingdom; (*de regimine regni sui se dimisit.*) *Reg. Orig.* 233, 234. *Reg. Jud.* 12. See *Dimittere*.

**DEMISE AND REDEMISE.** In conveyancing. Mutual leases made from one party to another on each side, of the same land, or something out of it; as when A. grants a lease to B. at a nominal rent, (as of a pepper corn,) and B. redemises the same property to A. for a shorter time at a real substantial rent. *Jacob. Whishaw.*

**DEMISI.** L. Lat. [from *demittere*, q. v.] I have demised or leased. *Demisi, concessi, et ad firmam tradidi*; have demised, granted and to farm let. The usual operative words in ancient leases, as the corresponding English words are in the modern forms. 2 *Bl. Com.* 317, 318. From the word *demisi* in a lease the law implies a covenant upon the part of the lessor that, at the time of the delivery of the lease, he had full power and authority to demise to the lessee for the time and on the terms expressed in the lease. *Hob. 12 a. Archb. Landl. and Ten.* 272.

**DEMISSIO.** L. Lat. [from *demittere*, q. v.] In old English law. A demise, or lease. *Ex demissione*, (q. v.); on the demise.

A transfer. *Demissio coronæ*; a transfer or demise of the crown. 1 *Bl. Com.* 249. See *Demise of the king*.

**DEMITTERE.** L. Lat. [from *de*, from, and *mittere*, to send.] In old conveyancing. To transfer; to demise or lease. See *Demisi*.

To send away, or part with. See *Dimittere*.

**DEMI VILL.** Half a vill. One of the smallest of the ancient civil divisions of England; consisting of five freemen, or frankpledges, with their families. 1 *Bl. Com.* 115. 1 *Steph. Com.* 116. *Spelman*, voc. *Hamel*. See *Vill*.

**DEMOER, Demoerger.** L. Fr. To stop, or stay; to remain; to abide or dwell with. *Britt. c. 16. Kelham*. See *Demorer*.

**DEMOLLIRE, Demolire.** Lat. To demolish; to throw down or overthrow. *Bract. fol. 115, 233. Demollitio*; a demolishing. *Id. fol. 234.*

**DEMONSTRATIO.** Lat. [from *demonstrare*, to point out, or show.] Demonstration; description, denomination or addition; the designation of a person or thing by words of addition, or reference; or what Lord Bacon calls "notes" and "signs to call;"—as, "J. S. son and heir of G. S.;" or, "clerk of such a court;" or, "my close called Dale, in the parish of Hurst, in the county of Southampton." *Bacon's Max.* 99, 100, 101. To this head belong the following maxims, (qq. v.) *Falsa demonstratio non nocet*. False description does not injure. *Præsentia corporis tollit errorem nominis, et veritas nominis tollit errorem demonstrationis*. The presence of a thing itself takes away the effect of error in the name of it, and the truth of the name takes away the effect of error in the demonstration or description. *Bac. Max.* 96, reg. 25. *Nem accipi debent verba in demonstrationem falsam quæ competunt in limitationem veram*. Words ought not to be taken to import a false demonstration, when they can be understood as words of true limitation. *Id. 59, reg. 13.*

*Demonstratio* is defined in the civil law, "an accessory designation of persons or things by circumlocation." 1 *Mackeld. Civ. Law.* 169, § 175. This occurred often in testaments; as "Stichus, my slave, born in my family," (*Stichum servum meum vernam*;) "Stichus my slave, whom I bought of Seius," (*Stichum servum quem a Seio emi*.) *Inst.* 2. 20. 30. And the rule respecting it was the same as in the common law: *Falsa demonstratione legatum non perimitur*. A legacy is not rendered null by a false description. *Id. ibid.*

**DEMORARI.** Lat. [L. Fr. *demorer, demeurer*.] In old pleading. To wait, stay or abide; to pause, stop or rest; to demur. *Steph. Pl.* 44. *Demoratur*; he demurs. *Moratur in lege*; he rests or abides in law. *Termes de la ley*, voc. *Demurrer*.

**DEMORER.** L. Fr. [from Lat. *demorari*, q. v.] To remain, or stay; to abide, reside or dwell. *Pur sufferer euz demorer a lour mesons*; for suffering them to stay at their houses. *Britt. c. 21. Demorauntz en pays*; residing in the country or neighborhood. *Id. ibid. Lautre partie doit demorer al purchasour*; the other part ought to remain with the purchaser. *Id. c. 39. Pur demorer ensemble*; to live together. *Id. c. 101.*

**DEMUR.** [from L. Fr. *demurer, demorer*, to stop, stay or rest.] In pleading. To raise an objection in point of law, and

*rest* or pause upon it, referring its decision to the court; to object to the pleading of the opposite party as insufficient to sustain his action or defence, and refer it to the judgment of the court whether it ought to be answered; in the language of the old books, to abide in law. "He which demurreth in law is said he that *abideth in law*—*moratur* or *demoratur in lege*." *Co. Litt.* 71 b.

**DEMURER, *Demeurer*.** L. Fr. To rest or stay; to abide; to demur. *Demurt en abeyance*; it rests or remains in abeyance. *Litt.* sect. 649. Demurrions *en vos discretions*; we rest upon your discretions. *Year book*, 1 Edw. II. 8. *Parol demurrer* was a plea that the pleadings, (*parol*) should stay or be suspended during the infancy of a party. See *Parol demurrer*.

**DEMURRAGE, *Demorage*.** [L. Lat. *demoragium*.] In maritime law. The detention of a vessel by the freighter beyond the time allowed by the charter party for loading or unloading, or for sailing.\* 3 *Kent's Com.* 203.

The allowance or payment made for such detention or delay. *Id. ibid.* 2 *Steph. Com.* 185. *Abbott on Ship*. [304,] 381.

**DEMURRER.** L. Fr. & Eng. [from L. Fr. *demurer, demorer*; L. Lat. *demorari*, to wait, stop or stay.] In pleading. Literally, a pause, or rest. A kind of pause or stop put to an action, [and usually in the pleadings,] upon a point of difficulty which must be determined by the court before any further proceeding can be had. *Cowell. Mansel on Demurrer*, 1. — An exception or objection by one of the parties to an action, to the pleading of the opposite party, as being insufficient in law to sustain his action or defence, upon which the party so objecting rests or abides upon the point in question, (*moratur* or *demoratur in lege*), and submits it to the judgment of the court.\* 1 *Lill. Abr.* 435. 3 *Bl. Com.* 314. — A declaration that the objecting party will not proceed with the pleading, because no sufficient statement has been made on the other side, but will wait the judgment of the court, whether he is bound to answer. *Steph. Pl.* 44. *Co. Litt.* 71 b. Strictly, a demurrer is not an answer, although it is sometimes considered as such. 6 *Peters' R.* 327. — An abiding in point of law, and a referring to the judgment of the court whether the declaration or plea of the adverse party is sufficient in law to be maintained. *Finch*, lib. 4, c. 40. *Mansel on Demurrer*, 1.

An issue joined upon matter of law, to be determined by the judges. *Id. ibid.* See *Issue in law*.

**DEMURRER.** In equity pleading. An objection to the complainant's bill in a suit in equity, of nearly the same nature as a demurrer in law, being an appeal to the judgment of the court whether, upon the face of the bill itself, the defendant shall be bound to answer; as for want of sufficient matter of equity therein contained. 3 *Bl. Com.* 446. 4 *Steph. Com.* 21.

A demurrer is an allegation of a defendant, which, admitting the matters of fact alleged by the bill to be true, shows that as they are therein set forth they are insufficient for the plaintiff to proceed upon, or to oblige the defendant to answer; or that, for some reason apparent on the face of the bill, or because of the omission of some matter which ought to be contained therein, or for want of some circumstance which ought to be attendant thereon, the defendant ought not to be compelled to answer. It therefore demands the judgment of the court whether the defendant shall be compelled to make answer to the plaintiff's bill or to some certain part thereof. *Mitford's Chanc. Pl.* 107, 108, [128, 129, Moulton's ed. and notes, *ibid.*]

**DEMURRER TO EVIDENCE.** In practice. An objection or exception by one of the parties to an action at law, to the evidence produced by the opposite party on the trial, as being *insufficient in law*, (admitting it to be true in fact,) to maintain or overthrow the issue, and referring it to the court to determine whether the law is upon the facts as shown in evidence.\* 3 *Bl. Com.* 372. 3 *Steph. Com.* 615. 2 *H. Bl.* 187. A mode of proceeding by which the court may be called upon to give judgment as to the law upon the facts attempted to be given in evidence upon the trial. *Mansel on Demurrer*, 119. If a party wishes to withdraw from the jury the application of the law to the fact, and all consideration of what the law is upon the fact, he *demurs in law* upon the evidence, and the precise operation of that demurrer is to take from the jury, and refer to the judge, the application of the law to the fact. *Eyre, C. J.*, 2 *H. Bl.* 187, 206. It is analogous to a demurrer in pleading, the party from whom it comes declaring that *he will not proceed*, because the evidence offered on the other side is not sufficient to maintain the issue. *Steph. Pl.* 90. See 2 *Tidd's Pr* 865. *Co. Litt.* 72.

**DEMURRER BOOK.** In practice. A record of the issue on a demurrer at law, containing a transcript of the pleadings, with proper entries; and intended for the use of the court and counsel on the argument. 3 *Bl. Com.* 317. 3 *Steph. Com.* 581.

**DEMY-SANGUE, Demysanke.** L. Fr. Half-blood. See *Half-blood*.

**DEN, Dene.** Sax. [L. Lat. *dena*.] In old records. A valley, vale, or dale. *Spelman*, voc. *Dena*. *Co. Litt.* 46.

A hollow or low place among woods. *Cowell*.

**DEN AND STROND.** In old English law. Liberty for ships or vessels to run aground, or come ashore. *Cowell*.

**DENA.** L. Lat. A hollow or valley, especially in woody ground; a den. *Cowell*. *Spelman*. Frequently used in Domesday Book as a sort of measure of land. *Tres denæ de sylva*; three dens of wood. *Id.*

**DENARATA.** L. Lat. [from *denarius*, a penny.] In old English law. The value or worth of a penny. *Denarata redditus*; a penny rent. *Reg. Orig.* 1 b. *Towns. Pl.* 64. See *Denariatus*.

**DENARIATUS.** L. Lat. [from *denarius*, q. v.] The price of a thing, consisting of a penny, (*pretium rei quæ denario constat*.) *Spelman*.

**DENARII.** (pl. of *Denarius*, q. v.) Lat. Money in general, (*pecunia in genere*.) *Spelman*, voc. *Denarius*. Any sort of *pecunia numerata*, or ready money. *Cowell*. *Towns. Pl.* 180.

**DENARIUS.** L. Lat. [Fr. *denier*.] An English penny. By the statute called *Compositio Mensurarum*, 51 Edw. I., it was declared that the penny sterling of England (*denarius Angliæ qui nominatur sterlingus*), should weigh 32 grains of corn from the middle of the ear, and 20 pennies [penny weights] should make an ounce, and 12 ounces a pound. *Spelman*. See 2 *Inst.* 575.

**DENARIUS.** Lat. In the Roman law. A silver coin of the value of ten asses, or ten pounds of brass. Its value in modern money is estimated at 7½d. sterling, or about 14½ cents. *Encyclop. Amer. Brande*.

**DENARIUS DEI.** L. Lat. In old English law. God's penny. Earnest money,

formerly given and received by the parties to contracts, to bind the contract. *Carta* 31 *Edw. I. m. 4*, cited in *Cowell*, and given at length in *Molloy de Jur. Mar.* 370—380. So called because the money so used was given to God, that is, to the church, or the poor. *Cowell*. See *Argentum Dei*, *Earnest*, *Money of adieu*.

**DENARIUS TERTIUS COMITATUS.** L. Lat. In old English law. The third penny of the county. The third part of the fines and profits arising from the county courts which anciently were reserved to the comes, or earl, as his official stipend. *Spelman*, voc. *Comes*. *LL. Edw. Conf.* c. 31. *Lib. Nig. Scacc.* cited *ibid.* *Cowell*.

**DENELAGE.** See *Denelage*.

**DENER, Denier, Denire.** L. Fr. A penny. *Deners, deneres, denerez, denrees, danree*; money. *Kelham*. *Deners apromptes*; money borrowed. *Britt.* c. 28.

**DENGLETERRE.** L. Fr. Of England. Written as one word for *de Engleterre*. *Britt.* fol. 1, 2.

**DENIER.** L. Fr. A penny. *Litt.* sect. 235. See *Dener*.

**DENIZATION.** In English law. The act of making a denizen. *Cro. Jac.* 540. *Co. Litt.* 129 a. See *Denizen*, *Naturalization*.

**DENIZEN.** [from L. Fr. *donaison*, (Lat. *donatio*,) a gift; or *deins nee*, born within. See *infra*.] In English law. An alien born who has obtained *ex donatione regis* (from the king's gift,) letters patent to make him, either permanently or for a time, an English subject: a high and incommunicable branch of the royal prerogative. 1 *Bl. Com.* 374. 2 *Steph. Com.* 481. See 1 *Id.* 406. 7 *Co.* 25, *Calvin's case*. *Cro. Jac.* 539, 540. A denizen is in a kind of middle state between an alien and a natural born subject, and partakes of both of them. He may take lands by purchase or devise, which an alien may not, but cannot take by inheritance. 1 *Bl. Com.* 374. 2 *Steph. Com.* 431. See 1 *Id.* 406. *Calvin's case*, 7 *Co.* 1. *Cro. Jac.* 539, 540.

A natural born subject; one born within (*deins nee*) the king's ligeance, and called in Latin *indigena*, the king's liegeman. *Co. Litt.* 129 a. But this is not the ordinary sense of the word. *Id. ibid.* 6 *Peters' R.* 117, and note.

**DENUNTIARE, Denunciare.** Lat. In the civil law. To give notice or warning, to summon. *Inst.* 4. 6. 15. *Calvin's Lex. Jurid.*

In old English law. To give notice; to summon. *Quod denunciare faciat tenenti quod sit ad certum diem certo loco*; that he cause notice to be given to the tenant that he be at a certain day at a certain place. *Bract.* fol. 307.

**DENUNTIATIO.** Lat. [from *denuntiare*, q. v.] In old English law. A notice or summons. *Bract.* fol. 302 b.

A public notice or publication, as of banns. *Id.* fol. 307 b.

**DEODAND.** [L. Lat. *Deo dandum*; a thing to be given to God.] In English law. Any personal chattel which was the immediate occasion of the death of any reasonable creature, and which was forfeited to the crown to be applied to pious uses, and distributed in alms by the high almoner. 1 *Hal. P. C.* 419. *Fleta*, lib. 1, c. 25. *Bract.* fol. 122. 1 *Bl. Com.* 800. 2 *Steph. Com.* 365. 3 *Ad. & Ell. N. S.* 333. 8 *Id.* 587. Deodands included both animate and inanimate objects; thus, if a horse or other animal killed a person, or a cart ran over him, the horse or cart was forfeited as a deodand. So the instrument with which a person was killed, as a sword or knife, was forfeited in the same manner. 1 *Bl. Com.* 301, 302. Deodands are unknown in American law, and have very recently been abolished in England by statute 9 & 10 Vict. c. 62. *Oliphant on Horses*, Appendix.

From the phraseology of the rule in the old books, expressed by the verse,

*Omnis quæ movent ad mortem sunt Deo danda*, (all things which move to death are deodands. *Dyer*, 77 b.) some have been led to confine the proper meaning of deodand to such things as caused death by their motion, or by being put in motion. Thus Spelman defines them to be all things, whether brute animals or inanimate objects, by a stroke from which the life of a man is unduly taken away, (*quorum impetu vita hominis indebite tollitur*;) as by the kick of a horse, the goading of an ox, the falling of a beam, the motion of a carriage. But *movere ad mortem* may also be translated "to tend or lead to death," "to occasion, or contribute to produce death"; a sense which Spelman also alludes to. Accordingly the rule always was that where death was occasioned by a fall from an object at rest, the latter was forfeited as a

deodand. *Britt.* c. 1, 7. 1 *Hal. P. C.* 422. Much importance, however, seems to have been from an early period attached to the circumstance of the object being in motion, which led to some distinctions in the later law on this subject.

**DEPART.** [L. Lat. *departire, decedere*.] In pleading. To forsake or abandon the ground assumed in a former pleading, and assume a new one. See *Departure*.

In old English law. To divide or separate; to part; (L. Fr. *departir*.) *Cowell*. See *Departir*.

In maritime law. To leave a port; to be out of a port. To depart imports more than to sail or set sail. A warranty in a policy that a vessel shall depart on or before a particular day is a warranty not only that she shall sail, but that she shall be out of the port on or before that day. 3 *M. & S.* 461. 3 *Kent's Com.* 307, note. *Cowen, J.*, 3 *Hill's R.* 118, 126.

**DEPARTABLE.** L. Fr. Divisible. *Britt.* c. 72.

**DEPARTIR, Departier.** L. Fr. To divide. *Pur ceo que rien remeynt a departir entre les autres parceners*; because nothing remains to divide between the other parceners. *Britt.* c. 72. *Departi, departy*; divided. *Id. ibid.* *La departie*; the separation. *Kelham*.

**DEPARTURE.** [L. Lat. *departura, decessus*.] In pleading. The abandonment of the ground of a former pleading, and the adoption of another.\* 2 *Saund.* 84, a note (1).

A departure takes place when, in any pleading, the party deserts the ground that he took in his last antecedent pleading and resorts to another. *Steph. Pl.* 410. Or, in other words, when the second pleading contains matter not pursuant to the former, and which does not support and fortify it. *Co. Litt.* 304 a. Hence a departure obviously can never take place till the replication. *Steph. Pl.* 410. The rule against departure is a primary one in pleading, and is ably illustrated by Mr. Stephen. Each subsequent pleading must pursue or support the former one; i. e. the replication must support the declaration, and the rejoinder the plea, without departing out of it. 3 *Bl. Com.* 310.

**DEPARTURE IN DESPITE OF COURT**, in old English practice, was when the tenant in a real action, after once appearing and being present in court, failed

to appear upon demand. For being in contemplation of law actually in court at the time when he was demanded, he was considered as having actually departed in despite or contempt of the court.\* *Roscoe's Real Act.* 283, 284.

**DEPENDING.** In practice. Pending or undetermined; in progress. See 5 Co. 47.

**DEPESAS.** Span. In Spanish American law. Spaces of ground in towns reserved for commons or public pasturage. 12 *Peters' R.* 443, note.

**DEPONENT.** [Lat. *deponens*, from *deponere*, q. v.] In practice. One who *deposes*; (that is, testifies or makes oath in writing) to the truth of certain facts; one who gives under oath testimony which is reduced to writing; one who makes oath to a written statement. The party making an affidavit is generally so called. See *Depose, Deposition*.

**DEPONERE.** L. Lat. [from *de*, down, and *ponere*, to put or lay.] In old practice. To put or lay down; to depose. See *Depose*.

To state under oath. *Bract.* fol. 293. Applied by Bracton to the delivery of the verdict of a jury. *Qui veritatem rei deponent ex integro*; who shall depose the truth of the matter anew. *Id. ibid.* The word occurs very frequently in this sense in the canon law. *Durand. Spec. Juris*, lib. 1, tit. *De teste*.

To make oath; to swear. In the case of *Knight v. Rushwood*, the defendant assumed to the plaintiff that if he and two witnesses would *deponere* before the Mayor of London that a certain obligation was read as an obligation of 200*l.* he would pay it. Whereupon the plaintiff, with two others, came before the Mayor of London, and there *deposed upon a book* accordingly, and hereupon brought the action. It was objected on argument, that *deponere* was a word uncertain, for *deponere* was, to lay down; but it was held certain enough, for to *depose* or *lay down* are in truth *synonyma et tantamount*. *Cro. Eliz.* 469, 470. See 1 *Stra.* 557, 561, *arg.*

In the civil law. To lay down or deposit with another; to entrust a thing to another to keep. *Calvin's Lex. Jurid.* See *Depositum*.

**DEPOPULATIO AGRORUM.** In old English law. The crime of destroying,

ravaging or laying waste a country. 2 *Hal. P. C.* 333. 4 *Bl. Com.* 373.

**DEPOPULATION.** In old English law. A species of waste by which the population of the kingdom was diminished. Depopulation of houses was a public offence. 12 Co. 30, 31.

**DEPORTATIO.** Lat. [from *deportare*, to carry away.] In the civil law. A kind of banishment, where a condemned person was sent or carried away to some foreign country, usually to an island, (*in insulam deportatur*;) and thus taken out of the number of Roman citizens, (*ex numero civium Romanorum tollitur*;) being treated as though he were dead. *Inst.* 1. 12. 1. It was banishment for life, attended with the loss of civil rights and the forfeiture of property. *Relegatio* was banishment for years, without the loss of civil rights. *Cooper's Notes in loco. Dig.* 48. 22. *Calvin Lex. Jurid.* Bracton uses the term *deportatio* as synonymous with exile, abjuration of the realm and outlawry. *Bract.* fol. 136 b.

**DEPORTATION.** Fr. & Eng. Banishment to a foreign country, attended with confiscation of property and deprivation of civil rights. A punishment derived from the *deportatio* (q. v.) of the Roman law; and still in use in France. *Encyclop. Amer.*

**DEPOSE.** [L. Lat. *deponere*, q. v.] In practice. To state or testify under oath, in writing; to make a statement or give testimony under oath, which is reduced to writing; to make a statement which is reduced to writing and sworn to; to put down in writing what is afterwards sworn to.\* A word constantly used in affidavits, as "A. B. of —, being duly sworn, *deposes* and says that," &c. See *Deposition*.

In old practice. To state under oath, without reference to writing; to testify or make oath to the truth of a thing. "*Deposed upon a book.*" *Cro. Eliz.* 470. See *Deponere*.

This word seems to be derived essentially from the canon law, in which the Lat. *deponere* and its derivatives are constantly applied to the statements of witnesses in judicial proceedings. *Durand. Speculum Juris*, lib. 1, tit. *De teste*. From the same source it has also probably derived its present peculiar application to *written testimony*, it having always been the practice in the ecclesiastical courts to reduce the proofs to writing. 3 *Bl. Com.* 100. The proper

meaning of *deponere* itself (to put or lay down,) has been supposed to imply the sense of putting down in writing; but there are very early instances of its use in English practice without any reference to written statement. Thus, it is said in Bracton of a jury, *veritatem rei deponant ex integro*, (they shall depose the truth of the matter anew,) clearly importing an oral statement, viz., the delivery of a verdict, under oath. *Bract. fol. 293.* The word appears to have been used in the same sense in *Knight v. Rushwood*, *Cro. Eliz. 469.* Besides, if "to put down in writing" be the radical sense of *depose*, it seems difficult to see the propriety of its application to a witness, who in affidavits is every day repeatedly called a *deponent*, and said to *depose*, though he commonly does not put down a line, and writes nothing but his signature. *Deposing* in this sense is rather the act of the officer who takes the testimony than of the witness who gives it. In *Knight v. Rushwood*, the court held that "to depose and lay down are in truth synonyma"; but what the party swearing may be considered to lay down is not clear, unless perhaps there be some reference in the original use of the word to *laying the hand* upon the gospels, that being anciently, as at present, the usual form of making oath, as contrasted with the rarer form of swearing by the uplifted hand, (*erectis sursum manibus.*) *Bract. fol. 143 b.* See *Hand, Oath, Uplifted hand.*

In modern practice, however, *depose* has undoubtedly become fixed in the sense of *stating under oath what is reduced in full to writing.* Hence a party is now never said to *depose* unless his statement is at the same time put down in writing, either by himself or the officer before whom he is sworn and examined. In open court, as on a trial before a jury, where no professed record is taken of his evidence, a witness is said to *testify*; out of court, as before a judge, commissioner or examiner, he is properly said to *depose.*

**DEPOSIT.** A species of bailment, derived from the civil law, and called also, after that law, *depositum.* Lord Holt, who is followed by Sir W. Jones, and Mr. Chancellor Kent have adopted the latter term in their definitions. *2 Ld. Raym. 909. Jones on Bailm. 36, et seq. 2 Kent's Com. 558, 560.* Mr. Justice Story has made use of the English word *deposit.* *Story on Bailm. § 4, 41, et seq. See Depositum.*

**DEPOSIT OF TITLE DEEDS.** See *Equitable mortgage.*

**DEPOSITARY.** In the law of bailment. The person with whom a thing is deposited by another, (*is apud quem res deponitur*), to be kept for the depositor or bailor, and returned upon demand, without a recompense; one who receives the goods of another to keep without compensation.\* *2 Kent's Com. 560, et seq. Bract. fol. 99 b. Inst. 3. 15. 3.*

**DEPOSITIO.** L. Lat. [from *deponere*, q. v.] In old practice. A deposition; the written testimony of a witness. *Reg. Brev. Appendix, 53. Bohun's Cursus Canc. 266.*

**DEPOSITION.** [L. Lat. *depositio*, q. v.] In practice. The testimony of a witness put or taken down in writing under oath or affirmation before a commissioner, examiner or other judicial officer, in answer to interrogatories and cross interrogatories. *3 Bl. Com. 449. 2 Tidd's Pr. 810, 811.* "The ordinary and usual meaning of the word *deposition* is confined to written testimony, at least in legal proceedings." Story, J., *1 Gallison's R. 497, 501.* A deposition is properly distinguished from an affidavit, (q. v.) which is always an *ex parte* statement drawn up in writing without any formal interrogation, and signed and sworn to by the party making it; although in affidavits the party is constantly called a *deponent*, and said to *depose.* See *Depose, Deponent.*

In a more general sense. The act of giving testimony under oath; the testimony itself so given; a matter related upon oath. *1 Stra. 564, arg.* This seems to have been the original sense of the word, though no longer in use, at least in American practice. Story, J., *1 Gallison's R. ub. sup.*

**DEPOSITUM.** Lat. [from *deponere*, to deposit.] In the civil and common law. A naked bailment of goods, to be kept for the bailor without reward, and to be returned when he shall require it. *Story on Bailm. § 4, 41. 2 Kent's Com. 558, 559. Jones on Bailm. 36. Inst. 3. 15. 3. Bract. fol. 100 b. See Deposit.*

**DEPOT.** Fr. A deposit; an act by which a person receives the property of another, binding himself to preserve it and to return it in kind. *Civil Code of Louis. art. 2897.*

**DEPRIVATION.** In English ecclesiastical law. The taking away from a clergyman his benefice or other spiritual promotion or dignity, either by sentence declaratory in the proper court for fit and

sufficient causes, or in pursuance of divers penal statutes which declare the benefice void for some nonfeasance or neglect, or some malfeasance or crime. 3 *Steph. Com.* 87, 88. *Burn's Eccl. Law*, tit. *Deprivation*.

DEPUIS. L. Fr. Since. *L. Fr. Dict.*

DEPUTARE. L. Lat. In old English law. To appoint, fix, or designate. *Si locus fuerit qui deputatus sit ad aliquem usum*; if it be a place which is designated for any use. *Bract.* fol. 210 b. *Id.* fol. 170 b, 383. *In campum ad duellum faciendum* deputatum; to the field appointed for making the duel. *Id.* fol. 141 b.

DEPUTE. [L. Lat. *deputare*, q. v.] To appoint or designate for a particular purpose. Now applied to persons only, but anciently to places. See *Deputare*, *Deputy*.

DEPUTY. [Fr. *deputé*; L. Lat. *deputatus*.] A person appointed, designated or deputed to act for another.\* One who exercises an office, &c., in another's right, having no interest therein, but doing all things in his principal's name, and for whose misconduct the principal is answerable. *Termes de la ley. Tomlins.*

*Deputy* was anciently used in the sense of *assignee*. Thus, an administrator was called the ordinary's *deputy*. See *Administrator*. So the assignees of an estate were sometimes termed deputies. Assignee is said in the old books to include *deputy* as being the more comprehensive term. Thus a man who had power to make assigns might always make deputies. *Termes de la ley.* The distinction was at the same time taken that assignee signified a person who had an estate or interest in the office itself, and acted in his own name and right, whereas a *deputy* always acted in the name and right of another. *Id. Perkins*, c. 1, § 100. *Cowell.*

DERAIGN, *Dereyn*, *Dereine*. [L. Lat. *derationare*, *dirationare*, *disrationare*; L. Fr. *dereiner*, *derener*, *desreigner*, *desrener*, contr. for *deraisner* or *deraisonner. Spelman.*] In old English law. To prove. To "deraign the warranty paramount." *Stat. 31. Hen. VIII.* c. 1. *Cowell.* See *Glanv.* lib. 2, c. 3. *Id.* c. 6, 20. 1 *Reeves' Hist.* 123. *Spelman*, voc. *Dirationare*.

To disprove or refute the assertion of an adverse party. *Spelman* makes this to be the proper meaning, relying in particular upon the etymology of *disrationare*, (from *dis*, contrary, and *ratiocinari*, to reason.) See more under *Disrationare*.

To put out of place or order; to displace or disarrange; to turn one out of his order; to degrade. Some of the old books give the word this sense, deriving it either from the Fr. *disarrayer*, to confound, or *derayer*, *desranger*, to derange or displace. *Termes de la ley. Cowell. Co. Litt.* 136. This derivation, however, is not approved by *Spelman*.

DERATIONARE. L. Lat. To deraign. See *Deraign*, *Dirationare*.

DERCHIEF, *Derechief*, *Derichefs*. L. Fr. Moreover; again; repetition. *Kelham.*

DERELICT. [Lat. *derelictus*, *derelictum*.] Left, forsaken; as land left dry by the retiring of the sea. 1 *Crabb's Real Prop.* 109. *Dyer*, 326 b.

Abandoned, cast or thrown away; as goods wilfully cast away by the owner on land, or thrown overboard at sea. *Inst.* 2. 1. 46. *Bract.* fol. 8. 2 *Reeves' Hist.* 9. 2 *Bl. Com.* 9. *Pro derelicto habetur quod dominus ea mente abjecerit, ut id in numero rerum suarum esse nolit; ideoque statim dominus ejus esse desinit.* That is regarded as, or held for derelict, which the owner has cast away with the intention of never again considering as his property; and therefore he immediately ceases to be its owner. *Inst. ub. sup.* See *Derelictum*.

Deserted or abandoned, as a vessel voluntarily deserted at sea. 2 *Kent's Com.* 357. 3 *Id.* 245. Property is *derelict*, in the maritime sense of the word, when it is abandoned without hope of recovery, or without an intention of returning. 1 *Gallison's R.* 133. 1 *Mason's R.* 373, 374. 1 *Sumner's R.* 207, 336, 400. *Ware's R.* 43. 2 *Kent's Com.* 357, note. 3 *Id.* 246, note.

DERELICTION. [Lat. *derelictio*.] The gaining of land from the water, in consequence of the sea shrinking back below the usual water mark; the opposite of *alluvion*, (q. v.) 2 *Roll. Abr.* 170. *Dyer*, 326 b. 2 *Bl. Com.* 262. 1 *Steph. Com.* 419.

The abandonment of property. 2 *Bl. Com.* 9.

DERELICTUM. Lat. [from *derelinquere*, to leave or abandon.] Derelict; wilfully abandoned or thrown away. *Inst.* 2. 1. 46. *Bract.* fol. 8. That which is without an owner, or which is not in the possession of any one. *Calvin's Lex. Jurid.*

DERENER, *Dereigner*, *Dereyner*, *Deraigner*, *Dereiner*, *Deraïner*. L. Fr. To

prove, to clear one's self, to deraign. *Kelham*.

**DERITTUM**, *Derictum, Directum, Dric-tum*. L. Lat. [Fr. *droit, droict*.] Right. *Spelman*. See *Droit, Directum, Right*.

**Derivativa potestas non potest esse ma-jor primitiva**. A derivative power cannot be greater than the primitive or original. *Noy's Max.* 4, max. 9.

**DERIVATIVE** (or **SECONDARY**) **CONVEYANCES**. Conveyances which presuppose some other conveyance precedent, and only serve to enlarge, confirm, alter, restrain, restore, or transfer the interest granted by such original conveyance. 3 *Bl. Com.* 324. They are releases, confirmations, surrenders, assignments, and defeasances. *Id.*

**DEROGARE**. Lat. [from *de*, from, and *rogare*, to pass a law.] In the civil and old English law. To derogate or diminish; to take from or impair the authority, validity or effect of a law or contract; to repeal some clause of an old law by a new one. *Derogatur legi cum pars detrahitur*; a law is derogated from, when a part of it is taken away. *Dig.* 50. 16. 102. *Hoc multum derogat chartæ et ipsius fidei*; this derogates or takes greatly from the charter and the credit to be given it. *Bract.* fol. 398. See *Rogare, Abrogare*.

**DEROGATION**. [Lat. *derogatio*, from *derogare*, q. v.] Diminution or partial abrogation; the taking from or impairing the authority or effect of a law or contract.

**DES**. L. Fr. From. *Kelham*.

**DESBLEMY**. L. Fr. Unblemished. *Britt.* c. 68.

**DESCEND**. [Lat. *descendere*; L. Fr. *descender*.] To pass immediately from one person to another by the operation of law, as to an heir on the death of his ancestor.\* See *Descent*. When an estate is said to have descended from A. to B. the natural and obvious meaning of the word is that it is an *immediate* descent from A. to B. *Story, J., 3 Peters' R.* 58, 91.

**DESCENDANT**. [Lat. *descendens*.] One who descends or is descended from another; a relative in the descending line; the opposite of *ascendant*, (q. v.)

*Descendants* is a good term of description in a will, and includes all who proceed

from the body of the person named; as grandchildren, and great grandchildren. *Ambl.* 397. 2 *Hilliard's Real Prop.* 542.

**DESCENDER**. Fr. To descend. Sometimes used as a substantive. See *Formedon in the descender*.

**DESCENT**, *Discent*. [Lat. *descensus*; Fr. *descent*.] The title by which a man, on the death of his ancestor, acquires his estate by right of representation, as his heir at law. 2 *Bl. Com.* 201. *Co. Litt.* 13 b. 3 *Cru. Dig.* 362. 4 *Kent's Com.* 374. — Succession by law to an estate in lands. *Hallifax Anal.* b. 2, c. 9, num. 2, 4. — Discent is when land, &c., after the death of the ancestor, is cast by course of law upon the heir. *Co. Litt.* 237 b. 2 *Crabb's Real Prop.* 1012, § 2390. — The passage or transmission of an estate from the ancestor to the heir, usually in the *descending* line.\* — The title to inherit land by reason of consanguinity, as well where the heir shall be an ancestor or collateral relation, as where he shall be a child or other issue. 1 *Steph. Com.* 357, note. This last is the new definition adopted by the English statute 3 & 4 Will. IV. c. 106. See *Ancestor, Heir, Inheritance*.

*Descent*, as applied to the transmission of estates, is a term wholly derived from the feudal law, in which, after feuds or fiefs became hereditary, it was an established maxim that they should always be transmitted *downwards* from father to son, and so lineally, while heirs continued, and never in the opposite direction. *Feud. lib.* 2 t. 50. *Id.* 4 t. 84. *Esprit des Lois*, liv. 31, c. 33. *Ersk. Inst.* b. 3, tit. 8. 2 *Bl. Com.* 211. Hence, doubtless, the adoption of the word *descent* in its full, proper, and peculiar sense of passage *downwards*, as expressive of this doctrine, in preference to the Roman term *succession*, (*successio*), which had no such exclusive meaning. *Esprit des Lois*, *ub. sup.* See *Succession*. The feudal law of descent was obviously founded on principles peculiar to the system, but it had also a quality which seems to have aided its reception and establishment, especially in England, namely, its seeming conformity to the order of *nature*. Hence the observation of Glanville, that an inheritance naturally descends, never naturally ascends; (*hæreditas naturaliter descendit, nunquam naturaliter ascendit*.) *Glanv.* lib. 7, c. 1. Hence, also, the employment by Bracton of the very expressive figure of a heavy body falling *downwards*, to illustrate the old English doctrine of de-



scent, as denoting the natural course of succession. *Descendit itaque jus, quasi ponderosum quid cadens deorsum, recta linea vel transversali, et nunquam re-ascendit eâ viâ qua descendit*; the right therefore descends like some heavy body falling downwards, in the right or transverse line, and never re-ascends the same way it descends. *Bract. fol. 62 b.* The feudal doctrine of descent was, however, adopted in England with a material qualification confining it to *lineal* succession. Collaterally, the inheritance was allowed to ascend. *A latere tamen ascendit. Bract. ub. sup.*

The ancient rule, thus modified—that inheritances shall lineally descend, but shall never lineally ascend—continued to be a leading canon of descent in English law almost down to the present time. It was abolished by statute 3 & 4 Will. IV. c. 106, which declares that “every lineal ancestor shall be capable of being heir to any of his issue.” 1 *Steph. Com.* 378. In American law the ascent of estates has long been authorized. 4 *Kent’s Com.* 392, 393 *et seq.* But, notwithstanding this material departure from the primitive or feudal law on this subject, the characteristic language of that law has been in a marked degree retained; the primitive terms *descent* and *descend* being constantly used even to denote transmission in an *upward* direction. Thus, an inheritance is said to “descend to an ancestor,” as “to a father.” 1 *Steph. Com.* 378. 2 *Hilliard’s Real Prop.* c. 77. The ancient law of England, even in Bracton’s time, was much more precise and discriminative; a right or estate being said to *ascend* or *descend* according as it passed *upwards* or *downwards* in the lines of consanguinity. *Nunquam re-ascendit. Bract. fol. 62 b. A latere ascendit. Id. ibid.* So, in the Scotch law, it is said “the succession *mounts upward* to the father.” *Ersk. Inst.* b. 3, tit. 8, § 9. But notwithstanding the example of very high American authority, (4 *Kent’s Com.* 393, 397,) the terms *ascent* and *ascend* have never taken firm root even in American law; nor is the derivative *ascendant* employed with the frequency which its peculiar propriety would seem to suggest. See *Ascendant*.

Descent was denoted in the Roman law by the term *successio*, which is also used by Bracton, and from which has been derived the *succession* of the Scotch and French jurisprudence. See *Successio, Succession*.

DESCHALLENGES. L. Fr. Unchallenged. *Britt. c. 87.*

DESCHUER, *Descheur*. L. Fr. To

fall out, to happen; to fall down. L. Fr. *Dict. Descheu de sa plaint*; falls from his plaint; that is, fails in it, or loses the benefit of it. *Kelham.*

DESCOUNSEILE, *Descounseille*. L. Fr. Discounselled; not filled up; unprovided. *Britt. c. 92. Kelham.* A term applied to a church or benefice.

DESCOVENABLE. L. Fr. Unfitting, unlawful; not juridical. *Britt. c. 52. Kelham.*

DESCRIPTIO PERSONÆ. L. Lat. Description of the person. 3 *Day’s R.* 470. 2 *Ld. Raym.* 1437. 2 *Stra.* 729. 1 *Hilliard’s Real Prop.* 605.

DESCYNNERS. L. Fr. Deciners; pledges in a decennary. *Britt. c. 12.*

DESERE EN AVANT. L. Fr. From henceforth. *Stat. of Tithes*, 18 *Edw.* III. 2 *Inst.* 639.

DESERVIRE. L. Lat. To serve; as a feudal tenant did his lord. 2 *Bl. Com.* 284.

DESGARNYS. L. Fr. Unwarned. *Britt. c. 4.*

Unfurnished, unprovided. *Id. c. 123.*

DESICUT. L. Lat. Whereas, (in the sense of opposition.) *Dicit quod habet in tali villâ midietatem unius carucatis terræ; desicut non fuit dotata nisi de tertia parte*; says that she has in such a town a moiety of one carve of land, whereas she was not endowed but of a third part. *Bract. fol. 314 b, 227 b.*

\* Inasmuch as. *Bract. fol. 335 b, 379, 390, 403, 436.*

DESIGNARE. Lat. To mark or point out; to designate, to assign or appoint. *Calvin Lex. Jur.*

DESIGNATIO. Lat. [from *designare*, q. v.] Designation, specification. *Designatio personæ*; designation of the person. 2 *Powell on Dev.* 357, 358. 1 *Hilliard’s Real Prop.* 499. Applied to a word of purchase, as distinguished from a word of limitation. 2 *Stra.* 802, 804.

*Designatio unius personæ est exclusio alterius.* The specification of one person is [or implies] the exclusion of another. *Co. Litt.* 210. “The law shall never seek out a person when the parties themselves have appointed one.” *Id. ibid.* See *Expressio unius est exclusio alterius*.

**DES KE, (QUE).** L. Fr. From which time; since. *Kelham.* *Des kes a ore*; from which time until now; so far. *Id.*

**DESMANTENANT.** L. Fr. From henceforth, from the present moment; even now, forthwith. *L. Fr. Dict. Kelham.*

**DESMARIE,** *Desmarietz.* L. Fr. Unmarried. *Kelham.*

**DESORE,** *Deshors.* L. Fr. From now, from this time. *Kelham.* *Desore en avant, desorenavant, desorenaunt*; from this time forward; from henceforth. *Id.*

**DESORMES,** *Desoremes, Desormais.* L. Fr. From henceforth; hereafter. *Stat. Westm.* 1, cc. 3, 7, 11. *Nul comon plee ne soit desormes tenuis, &c.*; no common plea shall hereafter be held, &c. *Artic. sup. Chart.* c. 4.

**DESOUBS,** *Desoubes.* L. Fr. Under. *Desoubes le seale*; under the seal. *Artic. sup. Chart.* c. 1.

**DESOUS,** *Desus, Desouz, Dessouz, Desoz.* L. Fr. Under, underneath; hereafter. *Kelham.* *Britt.* c. 55.

**DESOUTH.** L. Fr. Under; below. *Desouth le petit seale*; under the petty (or privy) seal. *Artic. sup. Chart.* c. 6. *Desouth nosmes*; undernamed. *Stat. Westm.* 1, c. 39.

**DESPARAGER.** L. Fr. To disparage. *Britt.* c. 67. See *Disparager.*

**DESPEREE.** L. Fr. Unforeseen. *Kelham.*

**DESPITE,** *Despyte, Despight.* L. Fr. & Eng. Contempt. *Despitz*; contempts. *Kelham.* See *Departure, &c.*

**DESPITOUSEMENT.** L. Fr. Despitefully, contemptuously. *Kelham.*

**DESPITUS.** L. Lat. Contempt. See *Despite.*

A contemptible person. *Fleta, lib.* 4, c. 5.

**DESPUNI,** *Despunies.* L. Fr. Unpunished. *Britt.* c. 4.

**DESRENABLE.** L. Fr. Unreasonable. *Britt.* c. 121.

**DESTREINDRE,** *Destreyndre.* L. Fr. To distrain. *Britt.* c. 20, 26.

**DESTRESSE.** L. Fr. Distress; process to compel an appearance. *Britt.* c. 26. Compulsion. *Kelham.*

The district or bailiwick of a sheriff. *Britt.* c. 120. See *District.*

**DESTRUCTION.** [Lat. *destructio*; L. Fr. *destruccion.*] A term used in old English law, generally in connexion with waste, and having, according to some, the same meaning. 1 *Reeves' Hist. Eng. Law*, 385. 3 *Bl. Com.* 223. See *Waste.* Britton, however, makes a distinction between waste of woods and destruction of houses; (*wast d' boys, destruccio' de tenem'tz.*) *Britt.* c. 66. *Stat. Marlbr.* c. 17.

**DESTRUERE.** Lat. To destroy. *Nul lus liber homo capiatur — aut aliquo modo destruat*; no freeman shall be taken — or in any manner destroyed. *Magna Charta*, c. 29. Lord Coke construes *destroyed* to mean, forejudged of life or limb, disherited or put to torture or death. 2 *Inst.* 48. Every oppression against law by color of any usurped authority is a kind of destruction. *Id. ibid.*

**DESTURBER.** L. Fr. To disturb. *Desturbe*; disturbed. *Britt.* c. 32.

**DESUM,** *Desuz, Desuis, Desuys.* L. Fr. Under; below. *Comprises desus le nosme de peison*; comprised under the name of mast. *Britt.* c. 55. See *Desous.* Upon; above. *Kelham.* L. Fr. Dict. Before. *Britt.* c. 89.

**DESVESTER,** *Devester.* L. Fr. To divest; to unclothe. L. Fr. Dict. See *Devest.*

**DET.** L. Fr. Debt. See *Debt.*

**DETACHIARE.** L. Lat. To seize or take into custody another's goods or person. This word is given by Cowell, but seems a corruption of *attachiare*, (q. v.)

**DETAINDER.** [Lat. *detentio*; L. Fr. *detenue.*] Detainment or detention. The keeping another out of possession of lands or tenements. 3 *Bl. Com.* 179. The withholding possession of another's goods. 3 *Steph. Com.* 524.

In English practice. A process which lies against persons in custody. 1 *Arch. Pr.* 80. *Arch. N. Pract.* 517.

**DETENER.** L. Fr. To detain. *Detenour*; a detainer; one who detains. *Britt.* c. 27.

**DETENTIO.** Lat. In old English law. Detention or detainment, as distinguished from, or in connexion with *captio*, (taking.) *Bract.* fol. 156 b. *Detentor*; a detainer. *Id. ibid.*

In the civil law. That condition of fact under which one can exercise his power over a corporeal thing at his pleasure, to the exclusion of all others. 1 *Mackeld. Civ. Law*, 236, § 229. It forms the substance of possession in all its varieties. *Id. ibid.*

**DETENUE.** L. Fr. Detention. *En la prise et en la detenue*; in the taking and in the detention. *Britt.* c. 27. Hence the name of the action of *detinue*, (q. v.)

**DETERMINABLE.** That which may cease or determine upon the happening of a certain contingency. 2 *Bl. Com.* 121. See *Determine*.

**DETERMINATION.** [L. Lat. *determinatio*.] A ceasing, termination, or coming to an end, (*terminus*).\* Distinguished from *expiration*, as depending on contingency. See *Determine*. "Tenant for life, or his representatives shall not be prejudiced by any sudden *determination* of his estate, because such a determination is contingent and uncertain." 2 *Bl. Com.* 122. Applied to estates at will. 2 *Crabb's Real Prop.* 407, *et seq.*

**DETERMINE.** [L. Lat. *determinare*, from *terminus*, an end or limit.] To cease, terminate, or come to an end, on the happening of a certain contingency.\* "There are some estates for life which may *determine* upon future contingencies, before the life for which they are created *expires*. As, if an estate be granted to a woman during her widowhood, or to a man until he be promoted to a benefice; in these and similar cases, whenever the contingency happens, when the widow marries, or when the grantee obtains a benefice, the respective estates are absolutely *determined* and gone." 2 *Bl. Com.* 121. This illustrates the distinction between *determination* and *expiration*.

To cause to cease or terminate; to put an end to, or bring to an end.\* Where a tenant holds his estate at the will of his lessor, the latter may *determine* his will and put him out whenever he pleases. 2 *Bl. Com.* 145. 2 *Crabb's Real Prop.* 407 *et seq.* If a person *determines* his estate by his own act, he shall not have emblements. *Co. Litt.* 55 b.

**DETESTARI.** Lat. In the civil law. To summon or give notice to one in his absence, (*absenti denuntiare*.) *Dig.* 50. 16. 39. 2.

**DETESTATIO.** Lat. In the civil law. A summoning made, or notice given in the presence of witnesses, (*denuntiatio facta cum testatione*.) *Dig.* 50. 16. 40.

**DETINET.** Lat. (He detains.) In pleading and practice. A term anciently used (as the English equivalent still is,) in declaring in certain actions of debt, as against executors and administrators, &c., and which has given name to the mode of declaring in such cases; the declaration being said to be "in the *detinet*." *Reg. Orig.* 140. 3 *Bl. Com.* 155. See *Debet et detinet*.

A term applied to the action of replevin where it is founded on the wrongful *detention* of a thing. 2 *Burr. Pr.* 1. 3 *Hill's* (N. Y.) *R.* 282. 4 *Id.* 603. 6 *Id.* 613.

**DETINUE.** L. Fr. and Eng. [L. Lat. *detentio*, or *breve vel actio de detentione*.] In practice. A species of personal action *ex delicto*, which lies to recover the specific possession of a personal chattel wrongfully *detained* from another, where the original taking was lawful, (as where the possession was acquired by delivery, finding, &c.,) or its value, and damages for its detention. 3 *Bl. Com.* 151. *F. N. B.* 138. *Co. Litt.* 286 b. 1 *Tidd's Pr.* 5. *Browne on Actions*, 358. 3 *Steph. Com.* 461. This was anciently a common remedy for the recovery of charters, deeds, and other title papers; but is now in a great measure superseded in English practice by the action of trover. *Co. Litt.* 286 b. 3 *Bl. Com.* 152. In some of the United States it has been abolished, and its place supplied by replevin. 2 *N. Y. Rev. St.* [553,] 456, § 15. 2 *Kent's Com.* 241, note.

**DETRIE.** L. Fr. Tries; tried. *Britt.* c. 90. *Kelham*.

**DETT, Dette, Det.** L. Fr. Debt; a debt. *Artic. sup. Chart.* c. 12. *De dette*. *Britt.* c. 28. *Distreine pur dette dont il n'est dettours*; distrained for a debt of which he is not a debtor, [which he does not owe.] *Stat. Westm.* 1, c. 23. *Art. sup. Chart.* c. 8.

**DETTOUR.** L. Fr. A debtor. *Britt.* c. 28. See *Dett*.

**DEUNX**, (pl. **DEUNCES**.) Lat. In the Roman law. A division of the *as*, containing eleven *uncia* or duodecimal parts;

the proportion of eleven-twelfths. 2 *Bl. Com.* 462, note. See *As.*

**DEVADIARI.** L. Lat. [from *de*, priv. and *vadiare*, to pledge.] In old English law. To be discharged from giving gage (*vadium*) or pledge. *Bract.* fol. 102. This seems to be the proper meaning; *devadiatus* in Domesday signifying, without sureties or pledges. *Cowell.* Although it is also used in Bracton in the opposite sense,—to be bound by pledges, to have pledges taken. *Bract.* fol. 217.

**DEVALER.** L. Fr. To go downwards; to bring down. *Kelham.*

**DEVANT,** *Devaunt, Devent.* L. Fr. Before. *Devant le roy en son place*; before the king in his place, (i. e. in his own court.) *Reg. Orig.* 17 b, nota. *Devaunt nos justices*; before our justices. *Britt.* c. 45.

**DEVASTATION.** [Lat. *devastatio*, from *devastare*, to waste.] The waste of the property of a deceased person by his executor or administrator. 2 *Bl. Com.* 508. Sometimes called *devastavit*, (q. v.)

**DEVASTAVERUNT.** L. Lat. (pl. of *devastavit*, q. v.) They have wasted. A term applied in old English law, to waste by executors and administrators, and to the process issued against them therefor. *Cowell.* See *Devastavit*.

**DEVASTAVIT.** [L. Lat. from *devastare*, to waste.] He has wasted. Waste by an executor or administrator; a mismanagement of the estate and effects of the deceased, in squandering and misapplying the assets contrary to the trust reposed in him.\* *Shep. Touch.* 485. 2 *Williams on Executors*, 1529. 2 *Greenl. on Evid.* § 347 a.

In practice. A return made by a sheriff, (in addition to the return of *nulla bona*,) to a writ of execution against an executor or administrator, signifying that *he has wasted* the goods of the testator or intestate; upon which the plaintiff may have execution immediately against the defendant personally, by *feri facias de bonis propriis*. 2 *Tidd's Pr.* 1018, 1025. *Shep. Touch.* 486. 5 *Co.* 32. 3 *Salk.* 125.

An entry or suggestion, on record, of waste by an executor or administrator, made on the part of a plaintiff, as the foundation of a new writ, or of an action of debt.\* 2 *Tidd's Pr.* 1113, 1114. 5 *Co.* 32.

**DEVENER,** *Devenir, Deveigner.* L. Fr.

To come; to become; to fall to. L. Fr. *Dict. Devenus*; come. *Britt.* c. 21.

**DEVENERUNT.** L. Lat. [from *devenire*, to come, to come to; or fall to.] In old English practice. A writ directed to the escheator, where any tenant of the king, holding *in capite*, died; and his son and heir being within age, and in the king's custody, died; commanding the escheator that by the oaths of good and lawful men he inquire what lands and tenements, by the death of the tenant *came to* (*devenerunt*) the king. *Termes de la ley.* *Cowell.* *Dyer*, 359 b.

**DEVENIO.** L. Lat. [L. Fr. *deveigne*.] I become. *Devenio vester homo*; (Fr. *jeo deveigne vostre home*,) I become your man. The first words of the ancient form of doing homage. *Bract.* fol. 80. *Litt.* sect. 85. *Co. Litt.* 64 b. 2 *Bl. Com.* 54.

**DEVENIT.** L. Lat. Comes or falls. Distinguished from *descendit*. *Cro. Car.* 427, 430.

**DEVER,** *Deyver.* L. Fr. To owe; ought. L. Fr. *Dict.* *Kelham.*

**DEVERS.** L. Fr. Against. *Devers le chiefe seignour.* *Britt.* c. 74. Towards. *Devers le fyn*; towards the end. *Kelham.*

**DEVEST.** [L. Fr. *devester, desvester*; L. Lat. *devestire*, q. v.] In old English law. To take away; to deprive of, as a possession, title, or estate; the opposite of *invest*.\* *Termes de la ley.* *Cowell.* See *Devestire*. Sometimes written *divest*; but *devest* has the support of the best authority. *Co. Litt.* 15 a, b. See *Invest*.

In modern law. To take or draw away. "The whole estate was *devested* and drawn out of the feoffees." 4 *Kent's Com.* 240. "The feoffment made by the feoffees *devested* all the estates." *Id. ibid.*

To strip or deprive. "The statute *devested* the feoffees of all the estate." *Id.* 239. See *Vest*.

**DEVESTIRE.** L. Lat. [from *de*, priv. and *vestire*, to clothe, from *vestis*, a garment.] In feudal law. To take away an investiture; to deprive of possession of a fee or feud. *Lib. Feud.* 1, tit. 7. *Calvin de Verb. Feud.*

**DEVIATION.** In marine insurance. A voluntary departure, without necessity, or any reasonable cause, from the regular

and usual course of the specific voyage insured. *Park on Ins.* 294, ch. 17. 1 *Marshall on Ins.* 183. *Hughes on Ins.* 139, (Am. ed. 1833.) 3 *Kent's Com.* 312.

A deviation is the increasing or varying the risks insured against, without necessity or reasonable cause. 1 *Phillips on Ins.* 480. (ed. 1840.) A deviation is not merely going out of the direct or usual course of the voyage, but it comprehends unusual and unnecessary delay, or any other act of the assured, or his agents, which, without necessity or just cause, increases or changes the risks included in the policy. *Id.* 481. Going out of the way or stopping for any other purpose than to save life or to relieve a vessel in distress, is a deviation. 2 *Wash. C. C. R.* 80. 2 *Cranch's R.* 268. 1 *Sumner's R.* 400, 328. 3 *Kent's Com.* 312—318. *Abbott on Ship.* (Perkins' ed.) [361], 441, notes.

DEVIER. L. Fr. To die. *Devie, devia, devy*; dies. *Litt.* sect. 2, 4. *Deviont*; they die. *Id.* sect. 4.

DEVISA, *Divisa*. L. Lat. A devise. See *Devise*.

DEVISABLE. Capable of being devised. 1 *Powell on Dev.* 165. 2 *Bl. Com.* 373.

DEVISARE. L. Lat. To devise. *Devisavit*; he devised. See *Devisavit vel non. Devisamentum*; *devisatio*; a devise. *Rast. Entr.* 486.

DEVISAVIT VEL NON. L. Lat. (Did he devise or not? was there, in fact, a will, or not?) In practice. An issue directed by a court of equity to a court of law, to try the validity of a will, upon some alleged objection of fact; such as fraud, or incapacity on the part of the testator.\* 1 *Powell on Dev.* 626, 628, and note. 1 *Story's Eq. Jur.* § 440.

DEVISE. L. Fr. A boundary; a division line, or space separating lands. *De devises et de boundes entre voisins*; of divisions and bounds between neighbors. *Britt.* c. 42. *Si devises entre voisins soient arres*; if division lines or spaces between neighbors be ploughed up. *Id. ibid.*

DEVISE. L. Fr. & Eng. [L. Lat. *devisamentum*, *devisatio*, *devisa* or *divisa*; from Fr. *deviser*; Lat. *dividere*, to divide.] A gift or disposition of lands or other real property, by a last will and testament.\*

2 *Bl. Com.* 373. 4 *Kent's Com.* 501, and note. 2 *Hilliard's Real Prop.* 474.

A will of lands, or other real estate. 1 *Powell on Dev.* 7—9. 2 *Bl. Com.* 373. 4 *Kent's Com.* 501.

The Latin form of this word (*divisa*.) would seem to show that the original spelling was *divise*. See *Divisa*. The word *devisisset*, however, occurs in Domesday. *Cowell*, voc. *Devisere*. Devise (*divisa*.) is used by Glanville to signify a division or disposition of personal property. *Glanv.* lib. 12, c. 20. *Spelman*, voc. *Divisa*. But it is now exclusively employed to denote a disposition of real estate, as distinguished from a bequest of personal. \*2 *Bl. Com.* 373. 1 *Steph. Com.* 557. A devise is said to be not a conveyance by the common law, but by custom and statute. 3 *Salk.* 127. See *U. S. Digest and Supplement*, Devise.

To DEVISE. [L. Fr. *deviser*; L. Lat. *devisare*.] To give or dispose of lands or hereditaments by will; to make a will of lands.\* 1 *Powell on Dev.* c. 2. 2 *Bl. Com.* 373, *et seq.*

To frame or draw an instrument, as a conveyance or assurance, by counsel. This word is used in *Roswell's case*, (5 Co. 19 b.) as *advise* is in *Higginbottom's case*, which follows, (*Id. ibid.*) both being treated in some degree as synonymous. *Cro. Eliz.* 297, 298, S. C. The phrase, "shall be reasonably devised, advised or required," continues to be used in covenants in deeds for further assurances.

DEVISEE. The person to whom lands or other real property, are devised or given by will. 1 *Powell on Dev.* c. 7.

DEVISER. L. Fr. To devise.

Some make the proper meaning of this word to be, to *speak*; others, to *will*. *Co. Litt.* 111 a. *Brande*. It is, more correctly, to divide, or distribute, from the Lat. *dividere*. *Houard's Dict.* cited 4 *Kent's Com.* 501, note.

DEVISOR. A giver of lands or real estate by will; the maker of a will of lands; a testator. 1 *Powell on Dev.* c. 5. 1 *Steph. Com.* 544.

DEVORCE, *Devors*. L. Fr. Divorce; a, or the divorce. *Britt.* c. 51, 107.

DEXTANS. Lat. In the Roman law. A division of the *as*, consisting of ten *uncia*; ten-twelfths, or five-sixths. 2 *Bl. Com.* 462, note (m).

DEYVER, *Deiver*. L. Fr. To owe; ought. *Kelham*. *Deyvent*; ought. *Id*.

DI. ET FI. L. Lat. In old writs. An abbreviation of *dilecto et fideli*; (to his beloved and faithful.) *Reg. Orig.* 17, *et passim*.

ΔΙΑΔΟΧΗ, Διαδοχή. Gr. [from διαδομαι, to succeed.] In the civil law. Succession. *Περί διαδοχῆς τῶν κατιόντων*; concerning the succession of descendants. *Nov.* 118, c. 1.

DIALOGUS DE SCACCARIO. L. Lat. Dialogue of, or about the Exchequer. An ancient treatise on the court of exchequer, attributed by some to Gervase of Tilbury, by others to Richard Fitz Nigel, bishop of London in the reign of Richard I. It is quoted by Lord Coke under the name of Ockham. *Crabb's Hist. Eng. Law*, 71.

DIATIM. L. Lat. [from *dies*, day.] In old records. Daily, every day; from day to day. *Spelman*.

DICA. L. Lat. In old English law. A tally for accounts, by number of cuts, (*tailles*), marks or notches. *Cowell. Lib. Rub. Scacc.* cited *ibid.* See *Tallia*, *Tally*.

DICERE. Lat. In old English law. To say, to speak; to deliver or pronounce, as a verdict. *Dicere veritatem*, (*verum*;) to say or speak the truth. *Bract.* fol. 292. *Et cum xxiiv veredictum suum dixerint*; and when the twenty-four shall have pronounced their verdict. *Id. ibid.* See *Dictum*.

DICT. L. Fr. A word. *Kelham*.

DICTIO. L. Lat. [from *dicere*, q. v.] In old English law. A word, an expression. *Si aliqua dictio duos contineat intellectus*; if any word contain two meanings. *Bract.* fol. 34.

DICTUM, (pl. DICTA.) L. Lat. [from *dicere*, to say.] A saying or remark; an opinion expressed by a judge in deciding a cause or question, either aside from the point to be decided, and hence said to be extra judicial, or *obiter*, (by the way) or given without deliberation, as a hasty opinion at *nisi prius*.\* Lord Mansfield, in *Saunderson v. Rowles*, observed upon an opinion of Lord Holt, cited on the argument of the cause, "that is an *obiter* saying only, and not a resolution or determination of the court, or a direct, solemn opinion of the

great judge from whom it dropped. This *dictum* of Lord Chief Justice Holt's is no formed decisive resolution, no adjudication, no professed deliberate determination." 4 *Burr.* 2064, 2068. These extra-judicial *dicta* are not usually considered as binding upon courts. 2 *Powell on Dev.* (by Jarman,) 200. 2 *Kent's Com.* 177, 335.

An assertion or statement. *Gratis dictum*; a gratuitous or voluntary representation; one which a party is not bound to make. 2 *Kent's Com.* 486. *Simplex dictum*; a mere assertion; an assertion without proof. *Bract.* fol. 320.

In old practice. The verdict of a jury. *Si juratores in dicto suo perseverent*; if the jurors persist in their verdict. *Bract.* fol. 201. *Si velint emendare dictum suum*; if they wish to amend their verdict. *Id.* fol. 296. See *Id.* fol. 292. *Dictum* is one of the component parts of the word verdict, (*verdictum*, q. v.)

DICTUM DE KENILWORTH. L. Lat. The edict or declaration of Kenilworth. An edict or award between king Henry III. and all the barons and others who had been in arms against him; and so called because it was made at Kenilworth castle in Warwickshire in the 51st year of his reign; containing a composition of five years' rent for the lands and estates of those who had forfeited them in that rebellion. *Blount.* 2 *Reeves' Hist. Eng. Law*, 62.

DIEI DICTIO. Lat. In the Roman law. The notice given by a magistrate that he intended to impeach a certain citizen, (whom he mentioned by name,) of a certain crime, before the people, on a certain day. *Hallifax Anal.* b. 3, ch. 13, num. 40.

DIEM CLAUSIT EXTREMUM. L. Lat. (He closed his last day; he died.) In English practice. A writ founded on the statute of Marlbridge, (c. 16,) anciently issued out of chancery to the escheator of the county, after the death of any of the king's tenants *in capite*, to inquire by a jury of what lands he died seised, and of what value, and who was the next heir to him, and to take the lands into the king's hand. *Reg. Orig.* 291 b. *F. N. B.* 251 K. 2 *Reeves' Hist.* 327. 3 *Id.* 55.

A writ awarded out of the exchequer after the death of a crown debtor. *Termes de la ley*. This writ is still in use in England, the sheriff being commanded by it to inquire by a jury when and where the crown debtor died, and what chattels, debts and lands he had at the time of his decease,

and to take and seize them into the crown's hands. 4 *Steph. Com.* 47, 48.

**DIES.** Lat. [Fr. *jour.*] In old English law. Day, a day; days. *Clara dies*; day-light. *Bract.* fol. 137 b. *Dies Lunæ*, (L. Fr. *Dilune*), Monday; *Dies Martis*, (Fr. *Dimar*), Tuesday; *Dies Mercurii*, (Fr. *Dimecre*), Wednesday; *Dies Jovis*, (Fr. *Dijau*, *Dijou*), Thursday; *Dies Veneris*, (Fr. *Di-bendre*), Friday; *Dies Saturni*, (Fr. *Dis-sate*), Saturday. *Law Lat. Dict.* Kelham.

Provisions or maintenance for a day, (*diei alimonium*.) *Spelman.* *Dies de firma*; a day of farm or rent; i. e. a day's entertainment as a rent. *Domesday*, cited *ibid.* See *Firma*. The king's rents were anciently reserved in provisions, (*firmes* or *feormes*); that is, in so many days' and nights' provisions. *Cowell.* *Spelman.*

A day of appearance in court, or continuance. *Co. Litt.* 134 b. See *Day*.

**DIES AMORIS.** L. Lat. In old English practice. A day of favor or indulgence; supposed to be the same with the *quarto die post*, as granted by the favor of the court. *Co. Litt.* 135 a. *Crabb's Hist. Eng. Law*, 218. It seems, however, to have rather signified any day granted by the court to a party, as a matter of indulgence, or out of the usual course of proceedings, as with a view to an amicable disposition of the suit. *Bract.* fol. 358, 369. It might be obtained after a default, and if so obtained by a defendant without any mention of the default, it amounted to a waiver of it. *Id. ibid.* 2 *Reeve's Hist.* 60.

**DIES A QUO.** Lat. (The day from which.) In the civil law. The day from which a transaction begins; the commencement of it; the conclusion being the *dies ad quem*. 1 *Mackeld. Civ. Law*, 168, § 172. See *A quo*.

**DIES COMMUNES IN BANCO.** L. Lat. In English practice. Common days in banc, or bench, (or, in the bench.) Stated days of appearance in the courts; called also common return days. *Crabb's Hist.* 217. 2 *Reeves' Hist.* 56, 57. See *Days in bank*.

The title of the statute 51 Hen. III. regulating the returns of writs and the continuance of proceedings in term. *Crabb's Hist.* 159. 2 *Reeves' Hist.* *ub. sup.*

**DIES DATUS.** L. Lat. In practice. A day given. A day or time of respite given by the court to a defendant in an

action; an adjournment or continuance. *Bro. Abr.* Continuance. See *Continuance*.

*Dies datus in banco*; a day given in the bench (or court of Common Pleas.) *Bract.* fol. 257 b. 361. A day given in bank, as distinguished from a day at *nisi prius*. *Co. Litt.* 135. See *Bank*.

*Dies datus partibus*; a day given to the parties to an action; an adjournment or continuance. *Crabb's Hist.* 217.

*Dies datus prece partium*; a day given on the prayer of the parties. *Bract.* fol. 358. *Gilb. C. Pleas*, 41. 2 *Reeves' Hist.* 60.

**DIES DOMINICUS.** L. Lat. [L. Fr. *diemane*, *dimaigne*, *dymain*.] The Lord's day; Sunday.

*Dies dominicus non est juridicus.* Sunday is not a court day, or day for judicial proceedings, or legal purposes. *Co. Litt.* 135 a. *Noy's Max.* 2. *Broom's Max.* 19. See *Sunday*.

**DIES EXCRESCENS.** L. Lat. In old English law. The added or increasing day in leap year. *Bract.* fol. 359, 359 b.

**DIES FASTI.** Lat. In the Roman law. Days on which the courts were open, and justice could be legally administered; days on which it was lawful for the prætor to pronounce (*fari*) the three words, *DO, DICO, ADDICO*. 1 *Mackeld. Civ. Law*, 24, § 35, and note. 3 *Bl. Com.* 424, note. *Calv. Lex. Jurid.* Hence called *trivernal* days; answering to the *dies juridici* of the English law.

**DIES GRATIÆ.** L. Lat. In old English practice. A day of grace, courtesy or favor. *Co. Litt.* 134 b. The *quarto die post* was sometimes so called. *Id.* 135 a.

**DIES IN BANCO.** L. Lat. In practice. A day (or days) in banc; a day in the bench, or court of Common Bench. 3 *Bl. Com.* 277. *Bract.* fol. 361, 362. See *Days in bank*.

**DIES INTERCISI.** Lat. In the Roman law. Divided days; days on which the courts were open for a part of the day. *Calv. Lex. Jur.* 1 *Mackeld. Civ. Law*, 24, § 35, note.

**DIES JURIDICUS**, (pl. **DIES JURIDICI**.) L. Lat. In practice. A court or judicial day; a day for judicial proceedings or legal purposes. *Dies juridici* are otherwise termed in the old books, *temps convenables*. *Britt.* c. 52. *Co. Litt.* 135 a. See *Juridicus*.

**DIES LEGITIMUS.** Lat. In the civil and old English law. A lawful or law day; a term day. *Hallifax Anal.* b. 3, c. 9, § 6. *Bract.* fol. 334 b. A day of appearance. *Id.* fol. 359.

**DIES MARCHIÆ.** L. Lat. In old English law. A day of the march, or border. A day of meeting of the English and Scotch, anciently appointed to be held annually on the *marches* or borders, to adjust all differences, and to preserve the articles of peace. *Cowell.* *Tomlins.*

**DIES NEFASTI.** Lat. In the Roman law. Days on which the courts were closed, and it was unlawful to administer justice; answering to the *dies non juridici* of the English law. 1 *Mackeld. Civ. Law*, 24, § 35, note. See *Dies fasti*.

**DIES NON.** An abbreviation of *Dies non juridicus*, (q. v.)

**DIES NON JURIDICUS.** L. Lat. In practice. A day not juridical; not a court day. A day on which courts are not open for business, such as Sundays and some holidays; as Christmas, Good Friday and Easter in England; and the fourth day of July, and (in some places) the first day of January in the United States.\* 3 *Chitt. Gen. Pr.* 104, 107. *Wharton's Lex. voc. Holiday.*

**DIES PACIS.** L. Lat. In old English law. Days of peace. According to Sir Henry Spelman, the Saxons and Normans divided the year between God [or the church] and the king; calling those days and parts of time which were assigned to the former, *dies pacis ecclesiæ*, (days of the peace of the church,) and the residue *dies pacis regis*, (days of the king's peace.) *Crabb's Hist. Eng. Law*, 35. *Spelman's Orig. of Terms*, cited *ibid.*

**DIES SOLARIS.** L. Lat. In old English law. A solar day, as distinguished from what was called *dies lunaris*, (a lunar day); both composing an artificial day. *Bract.* fol. 264. See *Day*.

**DIES UTILES.** Lat. In the Roman law. Available days. *Inst.* 2. 10. 6. Days on which a party having knowledge that an inheritance was open to him, might apply to the judge. *Cooper's trans.*

**DIETA, Diæta.** L. Lat. [from *dies*, a day.] In old English law. A day's journey, (*iter unius diei*.) *Spelman. Bract.*

fol. 135 b, 163, 235 b, 359. Treby, C. J., 1 *Ld. Raym.* 432, 433. According to Bracton, (fol. 235 b,) a reasonable *dieta* consisted of twenty miles. Blackstone makes this to be the computation of Sir Matthew Hale, but Hale merely refers to to the passage in Bracton, (fol. 235 b,) which Blackstone has not quoted. *Hale on F. N. B.* 184, note. 3 *Bl. Com.* 218.

A day's work. *Cowell.*

**DIETÆ COMPUTATÆ.** L. Lat. In old practice. Journeys accounts. Literally, days' journeys computed, or reckoned. *Selden's Diss. ad Flet.* c. 8, sect. 1. Talfourd Serj. arg. 7 *Man. & Gr.* 773, 774, and notes. See *Journeys accounts*.

**DIEU SON ACTE.** L. Fr. In old law. God his act; God's act. An event beyond human foresight or control. *Termes de la ley.* See *Act of God*.

**DIFFACERE, Disfacere.** L. Lat. [O. Fr. *deffacer*.] In old European law. To disfigure or deface; to mutilate; to destroy. *Spelman. LL. Longobard.* lib. 1, tit. 25, l. 68, cited *ibid.*

*Diffactio*; a mutilating or maiming. *Whishaw.*

**DIFFAMATIO.** Lat. In old English law. Defamation or slander. *Reg. Orig.* 49. *Artic. Cleri*, c. 1, 4.

**DIFFIDARE, Diffiduciare.** L. Lat. [from *dis*, priv., and *fides*, fealty or faith.] In feudal law. To renounce one's fealty or allegiance; the opposite of *affidare*, (q. v.) *Spelman.*

To proclaim hostilities; to declare war, (*faida*); to defy. *Id. Calvin de Verb. Feud.*

**DIFFIGURARE.** L. Lat. In old English law. To disfigure or deform. *Spelman. LL. Longobard.* lib. 1, tit. 25, l. 43, cited *ibid.*

**DIFFINDERE.** Lat. In the Roman law. To put off or postpone. *Calv. Lex. Jur.*

**DIFFORCIARE.** L. Lat. In old English law. To deny, or keep from one. *Difforciare rectum*; to deny justice to any one, after having been required to do it. *Matt. Par. A. D.* 1164. Perhaps the same with *Deforciare*, (q. v.)

**DIGESTA.** Lat. Digests. One of the titles of the Pandects of Justinian. *Inst.*



*procem.* § 4. Bracton uses the singular *Digestum*. *Bract.* fol. 19.

**DIGESTS, Digest.** [Lat. *digesta*, *digestum*; from *digerere*, to divide or arrange.] The ordinary name of the Pandects of Justinian, which are now usually cited by the abbreviation *Dig.* instead of *ff.* as formerly. *Inst. procem.* §§ 2, 4. *Cooper's Notes*, in loc. See *Pandects*, *ff.*

**DIGNITARY.** In canon law. A person holding an ecclesiastical benefice or dignity, which gave him some pre-eminence above mere priests and canons. To this class exclusively belonged all bishops, deans, archdeacons, &c.; but it now includes all the prebendaries and canons of the church. *Brande.* See 3 *Inst.* 155.

**DIGNITY.** In English law. An honor; a title, station or distinction of honor. Dignities are a species of incorporeal hereditaments, in which a person may have a property or estate. 2 *Bl. Com.* 37. 1 *Id.* 396. 1 *Crabb's Real Prop.* 468, *et seq.*

**ΔΙΚΗ, Δίκη.** Gr. In Greek law. Right, justice. *Calv. Lex. Jur. Schrev. Lex.*

An action; a cause. *Id.*

Judgment. *Id.*

A penalty or punishment. *Id.*

A forensic pleading, (*libellus forensis*). *Calv. Lex.*

A custom recognized by law. *Schrev. Lex.*

**DILAPIDATION.** [L. Lat. *dilapidatio*, from *di*, apart, and *lapidare*, from *lapis*, a stone.] Literally, the taking apart of the stones of a building. The pulling down of a building or any part of it; the suffering a building, or any part of it, to fall, or be in a state of decay; neglect of necessary repairs of a building.\* *Grady on Fixtures*, 269, *et seq.* 5 *Carr. & P.* 239. Used as synonymous with *waste* in buildings, and sometimes extended so as to include waste in lands, woods, &c. *Grady on Fixtures*, 222, 275. See *infra*.

In ecclesiastical law. A kind of ecclesiastical waste, which is either voluntary, by pulling down, or permissive, by suffering the chancel, parsonage, and other buildings thereunto belonging, to decay. 3 *Bl. Com.* 91. 3 *Steph. Com.* 112, 711. Dilapidation is where an incumbent on a church living suffers the parsonage house or out-houses to fall down, or lie in decay for want of necessary reparation; or it is the pulling down or destroying any of the houses or buildings belonging to a spiritual living, or destroying of the woods, trees, &c. apper-

taining to the same. *Degge's Parson's Counsellor*, b. 1, c. 8.

**DILATIO.** Lat. [from *differre*, to put off.] In old English law. Delay. *Sine dilatione*; without delay. *Reg. Orig.* 1. *Dilationes in lege sunt odiosae.* Delays in law are odious. *Branch's Princ.*

In the civil and canon law. Time allowed a plaintiff or defendant to do a judicial act; the putting off, or postponement of a cause. *Calvin Lex. Jur.* 4 *Reeves' Hist.* 17.

**DILATORIUS.** Lat. [from *differre*, to put off.] In civil and old English law. That which delays or puts off; dilatory. Anciently applied to a defendant's exception or plea by which the action was delayed, (*per quam actio differtur*.) *Bract.* fol. 399 b. *Inst.* 4. 13. 8, 10, 11. See *Dilatory plea*, *Exceptio*.

**DILATORY PLEA.** [Lat. *exceptio dilatoria*, q. v.] A plea which tends or is intended to delay or put off an action, by questioning the propriety of the remedy rather than by denying the injury, or right of action.\* 3 *Bl. Com.* 301. Anciently termed a *dilatory*. *Hob.* 245. — A plea founded on some matter of fact, not connected with the merits of the case, but such as may exist without impeaching the right of action itself. 3 *Steph. Com.* 576. 1 *Reeves' Hist. Eng. Law*, 451. This class of pleas comprises pleas to the jurisdiction, pleas in suspension, and pleas in abatement. *Steph. Pl.* 46. 3 *Steph. Com.* 576.

**DILIGENCE.** [Lat. *diligentia*, q. v.] In the law of bailment. Care; carefulness; attention. "There are infinite shades of care or diligence, from the slightest momentary thought, or transient glance of attention, to the most vigilant anxiety and solicitude." *Jones on Bailm.* 5. But only three degrees of diligence are generally recognized, viz.: high, *great* or extraordinary diligence; *common* or ordinary diligence; and low or *slight* diligence. *Story on Bailm.* §§ 11, 16. Common, or ordinary diligence is that degree of diligence which men, in general, exert in respect to their own concerns. It may be said to be the common prudence which men of business and heads of families usually exhibit in affairs which are interesting to them. *Id.* § 11.

**DILIGENCE.** In Scotch law and practice. Process of law, by which persons, lands or effects are seized in execution or

in security for debt.\* *Ersk. Inst. b. 2, tit. 11, § 1. Brande.*

Process for enforcing the attendance of witnesses, or the production of writings. *Ersk. Inst. b. 4, tit. 1, § 71.*

**DILIGENTIA.** In the civil law. Diligence; care; carefulness. The opposite of *culpa*, (q. v.) *Calv. Lex. Jur.*

**DILIGIATUS.** L. Lat. [from *di*, away, and *ligius*, or *ligatus*, under the protection of the law.] In old English law. Cast out of the law's protection, (*ejectus è patrocinio legis*;) outlawed; an outlaw. *Spelman. LL. Hen. I. c. 45, cited ibid.*

**DILUCIDUS.** Lat. Clear; lucid. *Dum dilucidis gauderet intervallis*; while he enjoyed lucid intervals. *Bract. fol. 43.*

**DIMIDIETAS.** L. Lat. [from *dimidius*, q. v.] In old English law. One-half; a moiety. *Cowell. See Medieta.*

**DIMIDIUS, Dimidium.** Lat. Half. *Dimidia marca*; half a mark, a demi-mark. *Towns. Pl. 181. Dimidia acra*; a half acre. *Id. 64. Dimidium unius librata*; half a pound. *Id. ibid. Dimidium unius acra*; half an acre. *Id. ibid.*

**DIMINUERE.** Lat. To lessen or diminish; to take away, leave out or omit. *De recordo diminueret*; to take from, or diminish a record. *Bract. fol. 147.*

**DIMINUTIO, Diminutio.** Lat. [from *diminuere*, q. v.] Diminution; a taking away; loss or deprivation. *Diminutio capitis*; loss of *status* or condition. See *Capitis diminutio*.

**DIMINUTION.** [Lat. *diminutio*, from *diminuere*, q. v.] In practice. Omission, imperfection or deficiency. A term applied to a record, where something is left out of it. See *Diminuere*. In proceedings for the reversal of a judgment, if the whole record be not certified, or not truly certified by the inferior court, the party suing out the writ of error may allege *diminution*, [i. e. may allege that it is imperfect in certain respects,] and may thereupon have a writ to the court below to certify the whole record. *2 Tidd's Pr. 1167.*

**DIMISI.** L. Lat. [from *dimittere*, to demise.] In old conveyancing. I have demised. *Dimisi, concessi, et ad firmam tradidi*; have demised, granted and to farm let. The usual words of operation in

a lease. *2 Bl. Com. 317, 318. Sometimes written demisi, (q. v.)*

**DIMISIT.** L. Lat. [He] has demised.

**DIMISSIO.** L. Lat. [from *dimittere*, to demise.] In old English law. A demise or lease. So written in Bracton, though the more modern form is *demissio*. *Bract. fol. 23 b. See Demissio.*

**DIMISSORIÆ LITTERÆ.** Lat. In the civil law. Letters dimissory or dismissory, commonly called *apostles*, (*quæ vulgo apostoli dicuntur*.) *Dig. 50. 16. 106. See Apostoli, Apostles.*

**DIMITTERE.** Lat. In the civil law. To send away; to discharge; to dismiss. *Filium de potestate dimittere*; to dismiss a son from one's power or authority; to emancipate. *Inst. 1. 12. 7, 10. Uxorem dimittere*; to send away or repudiate a wife. *Calv. Lex. Jur. Dimitti debito*; to be released from a debt. *Id.*

In old English law. To send away; to dismiss; to part with. *Dimittere se*; to dismiss one's self; to withdraw from. *Se dimittere, et a possessione recedere*; to dismiss himself and withdraw from the possession. *Bract. fol. 31 b, 85. Id. fol. 49, c. 20, in tit. See Demise of the crown.*

To demise. See *Dimisi, Dimissio*.

**DIOCESE.** [Lat. *diæcesis*, from Gr. *διοίκησις*, from *διοικέω*, to govern.] In ecclesiastical law. The see of a suffragan bishop; the circuit or territorial extent of a bishop's jurisdiction. *1 Bl. Com. 111. Co. Litt. 94. 4 Reeves' Hist. 4. Tomlins.*

A civil division of the Roman empire, embracing several provinces. *Calv. Lex. Jur.*

**DIPTYCHA.** Lat. [Gr. *δίπτυχα*, two leaved.] Diptychs; tablets of wood, metal or other substance, used among the Romans for the purpose of writing, and folded like a book of two leaves. The diptychs of antiquity were especially employed for public registers. They were used in the Greek, and afterwards in the Roman church, as registers of the names of those for whom supplication was to be made, and are ranked among the earliest monastic records. *Hubback's Evid. of Succession, 587. Encyclop. Amer.*

**DIRATIONARE, Derationare, Disrationare.** L. Lat. [from *di*, or *dis*, contrary, and *ratiocinari*, to prove.] In old English law. To deraign; to prove. *Dirationabit*

*jus suum hæres propinquior*; the next heir shall prove his right. *Glanv.* lib. 2, c. 6. *Et parati sunt hoc dirationare*; and this they are ready to deraign or prove. *Id.* lib. 4, c. 6. *Id.* lib. 2, c. 20.

To disprove; to prove the contrary, or refute an adversary's allegation, (*assertionem contrariam refellere*.) Spelman considers this to be the proper meaning, though the word seems to occur rarely in this sense. See *Disrationare*, *Deraign*.

**DIRECT.** [from Lat. *directus*, straight.] Immediate; by the shortest course; without circuitry; operating by an immediate connexion or relation, instead of operating through a medium; the opposite of *indirect*. *Direct evidence* is that which immediately applies to, or goes to establish the principal fact to be proved; *indirect evidence* is that which goes to prove the principal fact by establishing other, or subordinate facts, from which the principal fact may be inferred or presumed. See *Circumstantial evidence*.

In the usual or regular course or order, as distinguished from that which diverts, interrupts or opposes; the opposite of *cross* or *contrary*. *Direct examination* of a witness is thus distinguished from *cross examination*; as the *actio directa* of the Roman law was from the *actio contraria*, (q. v.)

In the usual or natural course or line; immediately upwards or downwards; as distinguished from that which is out of the line, or on the side of it; the opposite of *collateral*, (q. v.) The *direct line* of descent is that composed of persons arranged in the natural or genealogical order of succession, as son, grandson; father, grandfather, &c.; each person being immediately descended from the one above him in the series. See *Linea recta*.

**DIRECTUM.** Lat. In the civil law. That which is founded on strict law, as distinguished from equity. 1 *Mackeld. Civ. Law*, 267, 268, Kaufmann's note.

**DIRECTUM, Derictum, Drictum.** L. Lat. [O. Fr. *droict*.] In old European law. Right. Spelman, voc. *Derittum*. That which is straight, as opposed to crooked, (*tortum*, tort, or wrong.) *Id.* See *Tort*.

**DISABILITY.** [L. Lat. *dishabilitas, disabilitas*.] Incapacity to do a legal act, as to enter upon lands, to inherit or convey, to sue or be sued, &c., arising from the peculiar condition of a person, as from infancy, coverture, lunacy, alienage, imprisonment, or

absence. *Termes de la ley. Cowell. Blount. Angell on Limit.* cc. 19, 36. 2 *Hilliard's Real Prop.* 169, et seq. *U. S. Digest*, Limitations of actions, IV. *Id. Supplement*, h. t. V.

**DISABLING STATUTES.** The English statutes of 1 Eliz. c. 19, 18 Eliz. c. 10, 14 Eliz. cc. 11, 14, 18 Eliz. c. 11, and 43 Eliz. c. 29, (otherwise called the restraining statutes,) by which all colleges, cathedrals, and other ecclesiastical or eleemosynary corporations are restrained from making any leases of their lands, unless under certain regulations. 2 *Bl. Com.* 319, 321. *Co. Litt.* 44 a. 3 *Steph. Com.* 140.

**DISADVOCARE.** See *Deadvocare*.

**DISAFFOREST.** In English law. To discharge from being a forest; to release from the forest laws; to restore land which had been converted into a forest, to its former condition.\* *Crabb's Hist.* 153, c. 12. 2 *Bl. Com.* 416. See *De-afforest*.

**DISBAR.** In English practice. To expel a barrister from the bar. A power vested in the benchers of the four Inns of court, subject to an appeal to the fifteen judges. *Wharton's Lex.*

**DISBOCATIO.** L. Lat. [from *dis*, priv. and *boscus*, wood.] In old English law. A conversion of wood grounds into arable or pasture; an assarting. *Cowell.* See *Assart*.

**DISCARCARE.** L. Lat. [from *dis*, priv. and *carcare*, to load or charge.] In old English law. To discharge, to unload; as a vessel. *Carcare et discarcare*; to charge and discharge; to load and unload. *Cowell. Plac. Parl.* 18 *Edu.* I. cited *ibid.* In the Salian law it is written *discargare*, (q. v.)

*Discarcatio*; a discharging or unloading of a vessel. *Towns. Pl.* 226.

**DISCARGARE.** L. Lat. In old European law. To discharge or unload, as a wagon. Spelman. *L. Salic.* tit. 29, § 21, cited *ibid.*

**DISCEIT.** See *Deceit*.

**DISCENT.** The old way of writing descent, after the French. *Litt. sect.* 385. *Co. Litt.* 237. 1 *Salk.* 241.

**DISCEPTATIO CAUSÆ.** Lat. In Roman law and practice. The argument

or disputation of a cause by the advocates on both sides. *Hallifax Anal.* b. 3, c. 9, num. 39.

**DISCHARGE.** A setting free; a clearing, acquittance, release or delivery.

The instrument by which a person is discharged from a debt or obligation, or an encumbrance is cancelled; as the *discharge* of an insolvent, the *discharge* of a mortgage, &c. See *Charge*.

In maritime law. The unlading or unlivery of a cargo from a vessel. *Story, J., 2 Sumner's R.* 589, 600.

In equity practice. A statement of disbursements, and an offset of counter claims, brought in and filed on accounting before a master in chancery, and which follows the *charge* in the order of the proceedings, though not properly a defence to it.\* *Hoffman's Mast. in Chanc.* 38. See *Charge and discharge*.

To **DISCHARGE.** [from L. Lat. *dis-cargare*.] To set free or release; as to *discharge* a person from arrest or imprisonment, or from the obligation of his debts.

To dismiss or send away; as to *discharge* a jury from further attendance in court.

To dissolve, cancel or put an end to; as to *discharge* a contract, a mortgage, &c.

To unload; as to *discharge* a vessel; to take out; as to *discharge* a cargo. *Webster.* See *Discharge*.

**DISCLAIM.** [L. Lat. *disclamare, dis-advocare*.] To relinquish a claim; to deny having a claim, as by a disclaimer in equity. See *Disclaimer*.

To deny or disavow another's claim; as in the case of a disclaimer of tenure. See *Id.*

To decline accepting an estate, interest, or office. See *Id.*

**DISCLAIMER.** [from *dis*, priv. and *Fr. clamer*, to claim; L. Lat. *disclaimium, disclamatio, disadvocatio*.] A denial, disavowal or renunciation of a title or claim; the relinquishment or waiver of an interest or estate.

*Disclaimer of tenure* in English law, is where a tenant, in an action to recover services, disowns his tenure or *disclaims* to hold of his lord, which occasions a forfeiture of his estate. 2 *Bl. Com.* 275. 3 *Id.* 233. 1 *Steph. Com.* 431. *Termes de la ley.* 3 *Reeves' Hist.* 457. And in American law, a tenant *disclaiming* his landlord's title, and claiming the fee himself, is considered as a trespasser and may be ejected. 13 *Peters' R.* 1. 14 *Id.* 156.

*Disclaimer of an estate* is the refusal to accept an estate to which a person is entitled. There can be no disclaimer of an estate by the curtesy. 1 *Hilliard's Real Prop.* 116, and cases cited *ibid.*

*Disclaimer in equity* is where a defendant by his answer renounces all claim to the subject of the demand made by the plaintiff's bill. *Story's Equity Pl.* § 838. A disclaimer is distinct in substance from an answer, though sometimes confounded with it. But it can seldom be put in without an answer. *Id. ibid.* *Mitford's Chanc. Pl.* 318, (378, Moulton's ed. and notes.)

**DISCOMMON.** To deprive commonable lands of their commonable quality, by enclosing and appropriating or improving them. See *Common, Appropriate*.

**DISCONTINUANCE.** A cessation, intermission, interruption or suspension. *Co. Litt.* 325 a. *Litt. sect.* 592. "An ancient word in the law," and of divers significations. *Id. ibid.*

The omission of a continuance. See *infra*.

**DISCONTINUANCE OF AN ESTATE.** The termination or suspension of an estate tail, in consequence of the act of the tenant in tail, in conveying a larger estate in the land than he was by law entitled to do. 2 *Bl. Com.* 275. 3 *Id.* 171. An alienation made or suffered by tenant in tail, or by any that is seised in *auter droit*, whereby the issue in tail, or the heir or successor, or those in reversion or remainder, are driven to their action, and cannot enter. *Co. Litt.* 325 a. Mr. Preston calls it "the cesser of a seisin under an estate, and the acquisition of a seisin under a new, and necessarily a wrongful title." *Preston on Merger*, ch. ii.

Discontinuance is mentioned by Blackstone as a species of ouster of the freehold; and its operation formerly was, to take away entirely the right of entry, and put the issue and those in reversion and remainder, to the necessity of bringing a real action. 3 *Bl. Com.* 167. *Termes de la ley.* 1 *Steph. Com.* 431, note. But now, by statute 3 & 4 Will. IV. c. 27, s. 39, no discontinuance shall take away any right of entry. 1 *Steph. Com.* 522, 523. So that the title by discontinuance seems to be abolished, in English, as in American law. 3 *Id.* 485. 2 *Crabb's Real Prop.* 1064, § 2456. 2 *Arch. N. Prius*, 301. 1 *N. Y. Rev. Stat.* [725], 720, § 32.

**DISCONTINUANCE.** In practice. The termination of an action at law by the volun-

tary act of the plaintiff, and which is usually effected by entering a common rule for that purpose. 1 *Tidd's Pr.* 679. 2 *Arch. Pr.* 234. This cannot, however, be done without the payment of the defendant's costs, unless by consent or on a settlement, &c. *Id. ibid.* And sometimes, not without leave of the court. *Arch. N. Pract.* 306. A non pros (q. v.) is sometimes termed a discontinuance.

The termination of an action, in consequence of the plaintiff's omitting to continue the process or proceedings by proper entries on the record. 3 *Bl. Com.* 296. 1 *Tidd's Pr.* 678. 2 *Arch. Pr.* 233. See *Continuance*. With the disuse or abolition of continuances this has become obsolete. *Arch. N. Pract.* 305, 306.

**DISCONTINUANCE.** In pleading. That technical interruption of the proceedings in an action which follows where a defendant does not answer the whole of the plaintiff's declaration, and the plaintiff omits to take judgment for the part unanswered. *Steph. Pl.* 216, 217.

**DISCONTINUARE.** L. Lat. In old law and practice. To discontinue, to intermit, disuse, interrupt. *Co. Litt.* 325 a.

**DISCONTINUOUS (or INTERRUPTED) SERVITUDE.** In the civil law. That kind of servitude which needs the act of man to be exercised; such as the right of passage, of drawing water, of pasture, and the like. *Civil Code of Louis.* art. 723.

**DISCOOPERTA.** L. Lat. In old English law. Uncovered; out of repair, as a church. *Stat. Circumspecte Agatis.* 2 *Inst.* 489.

Discover, (q. v.)

**DISCOVERT.** L. Fr. & Eng. [L. Lat. *discooperta*.] In old English law. An unmarried woman or widow; one not within the bonds of matrimony. *Cowell. Blount.*

**DISCOVERY.** In equity. The revealing or disclosing of a matter by a defendant, in his answer to a bill filed for that purpose; the object of a species of bill in equity. See *infra. Hare on Discovery.*

**DISCOVERY, BILL OF.** In equity pleading. A bill for the discovery of facts resting in the knowledge of the defendant, or of deeds or writings, or other things in his custody or power; but seeking no relief in consequence of the discovery, though it may pray for a stay of proceedings at law till the discovery is made. *Story's*

*Eq. Pl.* § 311, 312, and notes. *Mitford's Chanc. Pl.* 53, (63, 64, Moulton's ed. notes.) This is the definition of a bill of discovery properly so called, as distinguished from a bill for discovery and relief.

**DISCUSSION.** [Lat. *discussio, executio*.] In the civil law. The exhausting of a remedy against a principal debtor, before proceeding against the surety.\* *Story's Conf. of Laws*, § 322 b. *Burge on Suretyship*, 329, et seq. The creditor must first proceed against the principal and discuss him, before resorting to the surety. *Id. ibid.* This privilege of a surety was called in the Roman law, *beneficium ordinis, or excussionis*. The word radically imports a thorough examination or search, as by shaking apart, (*discutiendo*), or shaking out (*executiendo*.)

**DISFRANCHISE.** To deprive or divest certain places or persons of any privilege, freedom, liberty or franchise. See *Franchise*.

**DISGAVEL.** In English law. To deprive lands of that principal quality of gavelkind tenure by which they descend equally among all the sons of the tenant. 2 *Wooddes. Lect.* 76. 2 *Bl. Com.* 85. *Robinson on Gavelkind*, 97, note. 6 *Mann. & Gr.* 282. See *Gavelkind*.

**DISGRADING.** In old English law. The depriving of an order or dignity. *Termes de la ley. Blount.* See *Degradation*.

**DISHABILITAS.** L. Lat. In old English law. Disability, incapacity. *Towns. Pl.* 32, 64.

**DISHERISON, Disinherison.** L. Fr. & Eng. [L. Lat. *exheredatio*.] In old English law. Disinheriting; a depriving or putting out of an inheritance. *Stat. of Vouchers*, 20 *Edw. I.* *Stat.* 8 *Ric. II.* c. 4. *F. N. B.* 55 C. 3 *Bl. Com.* 228. *Co. Litt.* 53.

**DISHONOR.** In mercantile law and usage. To refuse or decline to accept a bill of exchange, or to refuse or neglect to pay a bill or note at maturity. *Smith's Merc. Law*, 138, 146, 153.

**DISJUNCTIM.** Lat. In the civil law. Separately; severally. The opposite of *conjunctim*, (q. v.) *Inst.* 2. 20. 8. *Calvin Lex. Jur. Divin.* (q. v.) was the term used in the common law.

**DISMARI**, (pl. *Dismaries*.) L. Fr. Unmarried. *Stat. Westm.* 1, c. 22. *Kelham*.

**DISMES**. L. Fr. [L. Lat. *decima*.] Tithes. See *Tithes*.

Tenths; the tenths of all spiritual livings granted to the crown. *Cowell*. *Blount*. See *Decimæ*, *Tenths*.

**DISORDERLY PERSONS**. A species of offenders whose punishment is made the subject of particular statutes by which they are defined. *Stat. 5 Geo. IV.* c. 83, amended by 1 & 2 *Vict.* c. 38. 4 *Steph. Com.* 309. 4 *Bl. Com.* 169. 1 *N. Y. Rev. Stat.* [638], 645.

**DISPARAGARE**. L. Lat. [L. Fr. *disparager*, *desparager*; from *dis*, priv. and Fr. *parage*, family or parentage, or from Lat. *dispar*, unequal. *Spelman. Co. Litt.* 80 a.] In old English law. To bring together those that are unequal, (*disparēs conferre*;) to connect in an indecorous and unworthy manner; to connect in marriage those that are unequal in blood and parentage, (*imparēs sanguine et natalitiis connectere*;) to disparage. *Spelman. Ita maritentur ne disparagentur*; they shall be so married that they be not disparaged. *Magna Charta (Regis Johan.)* c. 3. 2 *Bl. Com.* 71. *Stat. Merton*, c. 7.

**DISPARAGATIO**. L. Lat. [L. Fr. *disparagacion*; from *disparagare*, q. v.] In old English law. Disparagement. *Hæredes maritentur absque disparagatione*; heirs shall be married without disparagement. *Magna Charta*, (9 Hen. III.) c. 6.

**DISPARAGE**. [L. Lat. *disparagare*, q. v.] To connect unequally; to match unsuitably. See *Disparagement*.

**DISPARAGEMENT**. [L. Lat. *disparagatio*, q. v.] An unequal alliance, or unsuitable connection in marriage. An injury done to a ward by marrying him or her to a person of inferior degree, or against decency.\* 2 *Bl. Com.* 70. *Co. Litt.* 80. A shame, disgrace or villany done by the guardian in chivalry to his ward within age, in point of his marriage. *Termes de la ley*.

**DISPARAGER**. L. Fr. To disparage.

*Disparata non debent jungi*. Things unlike ought not be joined. *Jenk. Cent.* 24, marg.

**DISPARK**. To dissolve a park. *Cro. Car.* 59. To convert it into ordinary ground,

**DISPAUPER**. In practice. To take away from a person the capacity or privilege of suing in *forma pauperis*, which he has already exercised. 1 *Tidd's Pr.* 98.

**DISPENSA**. L. Lat. In old English law. A place in a house where things were kept under the key of the housewife; a spence. *Bract.* fol. 151 b.

**DISPENSATION**. An exemption from some law; a permission to do something forbidden, or to omit something commanded. *Wharton's Lex.*

**DISPONE**. In Scotch law. To grant, convey or dispose of. 1 *Kames' Equity*, 254. Closely formed from the Lat. *disponere*, (q. v.)

*Disponer*; a grantor. *Id.* 256. *Disponee*; a grantee. *Id. ibid.* 1 *Forbes' Inst.* part 3, b. 1, ch. 1, tit. 1, sect. 1.

**DISPONERE**. Lat. To dispose of, or convey.

To arrange, or set in order; to direct or regulate. See *Cujus est dare ejus est disponere*.

**DISPOSSESSION**. A species of injury to real property by the amotion or deprivation of possession; otherwise termed *ouster*. 3 *Bl. Com.* 167. See *Ouster*.

**DISPUNISHABLE**. In old English law. Not answerable. *Co. Litt.* 27 b, 53. 1 *Steph. Com.* 245. 2 *Crabb's Real Prop.* 47, § 1000.

**DISPUTATIO FORI**. Lat. In the civil law. Discussion or argument before a court. 1 *Mackeld. Civ. Law*, 23, § 34. *Dig.* 1. 2. 2. 5.

**DISRATIONARE**. L. Lat. [L. Fr. *desreigner*.] In old English law. To prove; to deraign; to establish or make good a claim, charge or accusation. *Bract. ub. infra*. *Spelman* considers this as merely another form of *dirationare*, (q. v.): and makes its proper signification to be, to disprove or refute, (from *dis*, priv. and *rationari*, to prove.) It is, however, never employed in this sense by Bracton, who uses it frequently, but only in the sense first given. *Et quod fecit hoc—offert se dirationare versus eum*; and that he did this—he offers himself to deraign (or prove) against him. *Bract.* fol. 138. See *Id.* fol. 101 b, 119, 372 b, 373 b. *Si negaverit, oportet quod appellatus hoc dirationet versus eum*; if he deny, the appellee must de-

raign this against him. *Id.* fol. 151. *Dat appellatus vadium se defendendi, et appellator vadium disrationandi*; the appellee gives pledge to defend himself, and the appellor pledge to deraign (or prove his charge.) *Id.* fol. 137, 144, 153. *Corpus disrationare*; to deraign (or prove) the body; to prove a man to be another's villein. *Id.* fol. 25 b, 191. *Villanus fuit, quia disrationavit eum coram justitiariis in villanum suum*; he was a villein, because he proved him before the justices to be his villein. *Id.* fol. 199 b, 306.

*Disrationatio* is used in the same sense. See *infra*.

**DISRATIONATIO.** L. Lat. In old English law. Deraignment or proof; the making good a claim or charge. *Et quod ita fui inde dotata et seysita, habeo sufficientem disrationationem et probationem*; and that I was so endowed and seised thereof, I have sufficient deraignment and proof. *Bract.* fol. 313 b, 297.

**DISSAISARE, Dissaisire.** L. Lat. In old English law. To disseise, or put out of seisin. *Spelman.* The more usual forms are *disseysire* and *disseisire*. See *Disseise*.

**DISSEISE.** [L. Lat. *disseisire, disseysire, dissaisire, disseisiare*; L. Fr. *disseisir.*] To deprive of seisin; to turn or put out of possession wrongfully; to oust or dispossess of a freehold, (*verum dominum è prædiis ejicere, eademque per injuriam possidere.*) *Spelman.* See *Disseisin*.

**DISSEISEE.** [L. Fr. *disseisi, disseise*; L. Lat. *disseysitus.*] The party who is disseised, or put out of possession or seisin of the freehold. *Litt.* sect. 472. *Termes de la ley.*

**DISSEISIARE.** L. Lat. To disseise. *Magna Charta*, c. 27.

**DISSEISIN.** [L. Fr. *disseisine, dissaisin*; L. Lat. *disseisina, disseysina, dissaisina.*] Deprivation or putting out of seisin; a wrongful putting out of him that is actually seised of the freehold. *Co. Litt.* 277 a. 3 *Bl. Com.* 189. A species of injury by ouster or dispossession. *Id. ibid.* 3 *Steph. Com.* 483. *Litt.* sect. 279. *Roscoe's Real Act.* 61. See *Seisin*.

Disseisin was originally an actual dispossession, but afterwards many acts were held to amount to disseisin, if the injured party chose to consider them as such; and this was called *disseisin by election*. 2 *Crabb's Real Prop.* 1063, 1064, § 2455.

4 *Kent's Com.* 482—490. 1 *Burr.* 60, 107, 108. See *Disseisina*.

**DISSEISINA, Disseysina.** L. Lat. In old English law. Disseisin. *Towns. Pl.* 64. *Bract.* fol. 159 b, *et seq.* *Disseisinam satis facit qui uti non permittit possessorem, vel minus commode, licet omnino non expellat*; he effectually commits a disseisin who does not permit the possessor [of land] to enjoy it, or makes the enjoyment of it inconvenient, though he does not wholly (or absolutely) expel him. *Co. Litt.* 331. *Bract.* lib. 4, tr. 2.

**DISSEISIRE, Disseysire.** L. Lat. In old English law. To disseise. *Towns. Pl.* 64. *Disseysire* is uniformly used by *Bracton*. *Bract.* fol. 26, *et passim*.

*Disseisitor, disseysitor.* A disseisor. *Towns. Pl.* 64. *Bract.* fol. 176, *et passim*.

*Disseisitus, disseysitus.* A disseisee. *Bract.* fol. 176, *et passim*.

**DISSEISOR.** [L. Fr. *disseisour*; L. Lat. *disseysitor.*] He who disseises; he who puts another out of possession or seisin of the freehold.\* *Litt.* sect. 279. He who puts a man out of his land without order of law. *Termes de la ley.*

**DISSEISORESS.** A woman that disseises another person. *Litt.* sect. 678. *Co. Litt.* 357 b.

**DISSIGNARE.** L. Lat. In old law. To break open a seal. *Whishaw.*

**DISSIMULATIO.** Lat. A passing over. *Dissimulatione tollitur injuria.* An injury is extinguished by the forgiveness or reconciliation of the party injured. *Ersk. Inst.* b. 4, tit. 4, § 108.

**DISSOLVERE.** Lat. To dissolve, as a contract or connection. *Eodem modo quo oritur, eodem modo dissolvitur.* By the same means by which a thing originates, by the same means is it dissolved. It is dissolved in the same mode in which it was created. *Story on Partn.* §§ 117, 268. Ordinarily, the dissolution of a contract is required by the common law to be by an instrument of the same dignity and solemnity as that by which it is created. *Id. ibid.*

**DIST.** L. Fr. [from *dire*, to say.] Spoken. *Britt.* c. 42.

Speech or report. *Kelham.*

**DISTINCTE ET APERTE.** L. Lat. In old English practice. Distinctly and

openly. Formal words in writs of error, referring to the return required to be made to them. *Reg. Orig.* 17.

**DISTINGUERE.** Lat. To distinguish; to make a distinction.

*Distinguenda sunt tempora; distingue tempora et concordabis leges.* Times are to be distinguished; distinguish times and you will harmonize laws. 1 *Co.* 24. A maxim applied to the construction of statutes.

*Distinguenda sunt tempora; aliud est facere, aliud perficere.* Times must be distinguished; it is one thing to do, another to perfect. 3 *Leon.* 243. *Branch's Princ.*

**DISTRACTIO.** Lat. [from *distrahere*, q. v.] In the civil law. The sale of a pledge by a creditor. *Inst.* 2. 8. 1. See *Distrahere*.

**DISTRAHERE.** Lat. [from *dis*, apart, and *trahere*, to draw.] In the civil law. To sell, particularly at auction. *Calvin Lex. Jur.* *Distrahere pignus*; to sell a pledge in payment of a debt. *Id.* *Heinecc. El. Jur. Civ.* lib. 2, tit. 8, § 467. 1 *Mackeld. Civ. Law*, 384, § 349.

To draw apart, or separate; to dissolve, as an obligation or contract. *Calv. Lex.*

**DISTRAIN, Distrein.** [from L. Fr. *distreindre, destreyndre*; L. Lat. *distringere*, to bind or coerce.] To take and keep the property of another as a pledge, (*ceu pignus et vadem*), in order to compel the performance of some duty; such as the payment of rent, the performance of services, an appearance in court, &c. *Spelman.* 3 *Bl. Com.* 231.

**DISTRAINOR, Distreinor.** The party distraining goods or chattels.

**DISTREINDRE.** L. Fr. To distrain. *Britt. c.* 26. *Distreint*; distrained. *Id.* *ibid.* The more usual form is *destreindre* or *destreyndre*. *Id.* *per tot.*

**DISTRESS.** [from L. Fr. *distresse*; L. Lat. *districtio*, q. v.] The taking a personal chattel out of the possession of a wrong doer into the custody of the party injured, to procure a satisfaction for a wrong committed; as for non-payment of rent, or injury done by cattle. 3 *Bl. Com.* 6, 7. *Co. Litt.* 47. The taking of beasts, or other personal property by way of pledge, to enforce the performance of something due from the party distrained upon. 3 *Bl. Com.* 231. The taking of a defendant's

goods, in order to compel an appearance in court. *Id.* 280. 3 *Steph. Com.* 361, 363. *Gilbert on Rents*, 3, 92. 1 *Crabb's Real Prop.* 224. 3 *Kent's Com.* 461.

The thing or chattel itself, so taken or distrained. *Spelman, vocc. Distringere, Districtus. Termes de la ley.* See *Distringas*.

**DISTRESS INFINITE.** In English practice. A distress which has no bounds with regard to its quantity, and may be repeated from time to time until the stubbornness of the party is conquered. 3 *Bl. Com.* 231, 280, 281. *Termes de la ley.* 3 *Steph. Com.* 509.

**DISTRIBUTION.** [Lat. *distributio*, from *distribuere*, to distribute.] A dealing or division among several; a dealing in portions or shares; the giving to each of several his or her share.\* Commonly used to express the division of the personal effects of an intestate among his widow and children or next of kin. See *Distributions, Statute of*.

**DISTRIBUTIONS, Statute of.** The title of the English statute of 22 & 23 Charles II. c. 10, containing provisions for the distribution of the personal estate of an intestate among the widow and children, or next of kin. 2 *Kent's Com.* 420. Statutes of a similar kind in the United States are generally termed *statutes of distribution*.

**DISTRICT.** [L. Lat. *districtus, districtio*, from *distringere*, to distrain; L. Fr. *distresse*, from *destreindre*, to distrain.] In old law. A circuit or territory within which the power of *distraining*, or other coercive authority might be exercised. See *Districtio, Districtus*.

In modern law. A portion of territory, (as of a state, county, city or town,) defined by law, within which a certain jurisdiction or authority may be exercised; a civil division of a state or country for judicial or other purposes; any limited extent of territory.

By successive extensions of meaning this word has gradually lost its original and peculiar signification, and is now constantly used in ordinary language to denote any extent of territory for any purpose. Its original import is sufficiently pointed out by its etymology; in further illustration of which it may be observed, that the terms *district* and *distress* appear to have been at one time used in English law to denote the same thing; the former being formed from the Latin, (*districtus*), the latter from the



French (*distresse*) form of the word. Thus it is said in Britton, "if the vouchee be not within the *distress* [bailiwick] of the sheriff," &c., (*si celuy garaunt ne soit en la destresse le visconte, &c.*) *Britt. c. 120.*

**DISTRICT COURTS.** In American law. Courts held in each of the thirty-five districts into which the United States are divided, consisting of a single judge, and which act both as courts of common law and also as courts of admiralty. 1 *Kent's Com.* 303—305, 353.

**DISTRICTIO.** L. Lat. [from *distringere*, to bind, coerce or distrain; L. Fr. *distresse*.] In old English law. A distress, distraint or distraining. *Districcio—modum non excedat*; distress shall not exceed measure, (shall not be excessive.) *Bract. fol. 203 b. Si fiat districcio ubi nulla causa est distringendi*; if a distress be made where there is no cause for distraining. *Id. fol. 217.* See *Id. fol. 440 b. Stat. Marlbr. c. 4.* Said by Lord Coke to mean a strait, (*angustia*), because the cattle distrained are put into a strait or pound. *Co. Litt. 96 a.* But see *Distringere*.

A thing, chattel or animal distrained. *Nullus de castro faciat ducere districtiones quas fecerit extra comitatum in quo captae fuerint*; no person henceforth shall cause the distresses which he has made to be led out of the county in which they were taken. *Stat. Marlbr. c. 4. Id. c. 1. Spelman, voc. Distringere.*

A circuit or territory within which the power of distraining might be exercised. *Qui terras—infra districtionem vestram non habent, per quas—distringi possunt*; who have not lands within your district by which they can be distrained. *Reg. Orig. 6 b. Districtus* (q. v.) was used in the same sense.

Any compulsory proceeding. *In omni actione, ubi duæ concurrunt districtiones, videlicet in rem et in personam, illa districtio tenenda est quæ magis timetur et magis ligat.* In every action, where there are two concurrent distresses, [modes of compulsory proceeding,] namely, against the property and against the person, that distress [proceeding] is to be adopted which is the more feared, and is the more stringent [binds harder.] *Bract. fol. 372.*

**DISTRICTUS.** L. Lat. [from *distringere*, to bind; L. Fr. *distresse*.] In old English law. A distress; a distraint; a district. The place or locality within which the power of distraining might be exercised; (*quicquid loci in quo distringendi potestatem*

*quis habet.*) *Spelman.* Hence the English *district*, (q. v.) The phrase, "out of his fee," (Fr. *hors de son fee*), was otherwise expressed, "out of his district," (*extra districtum suum.*) *Spelman.*

In feudal law. The power of coercion or distress; the jurisdiction of a magistrate or feudal lord. *Lib. Feud. 1, tit. 5, § 4.*

A place or territory within which such power or jurisdiction might be exercised. *Calvin Lex. Jurid. Id. de Verb. Feudal.*

**DISTRINGAS.** L. Lat. (You distrain.) In English practice. A writ directed to the sheriff of the county in which a defendant resides, or has any goods or chattels, commanding him to *distrain*, (*Præcipimus tibi quod distringas*—We command you that you distrain;) upon the goods and chattels of the defendant for forty shillings, in order to compel his appearance. 3 *Steph. Com.* 567. This writ issues in cases where it is found impracticable to get at the defendant personally, so as to serve a summons upon him. *Id.*

A *distringas* is also used in equity, as the first process to compel the appearance of a corporation aggregate. *Stat. 11 Geo. IV. and 1 Will. IV. c. 36. Wharton's Lex.*

**DISTRINGAS JURATORES.** L. Lat. (You distrain the jurors.) In English practice. A process for enforcing the attendance of jurors, which is supposed to be issued after the *venire* to summon them, but in practice is issued at the same time, founded on a supposed and fictitious neglect of the jurors to attend upon the *venire*. It commands the sheriff to distrain them by their goods, so that he may have them before the court in banc on an ulterior day, to try the cause, or (alternatively,) before the court at *nisi prius*, if the judge of *nisi prius* shall first come, on some intervening day specified, into the county where the venue is laid.\* 3 *Steph. Com.* 590, 591.

**DISTRINGAS NUPER VICE COMITEM.** L. Lat. (You distrain the late sheriff.) In practice. A writ issued against a sheriff who had gone out of office before complying with a rule to bring in the body of a defendant, directed to his successor, commanding him to *distrain the late sheriff* by all his lands, &c., so that he might have the defendant's body in court, to answer the plaintiff. 1 *Tidd's Pract.* 313. It is now obsolete. *Id. note.*

A writ to distrain a sheriff out of office, in order to compel him to sell goods seized under a *feri facias*. *Archb. N. Prac.* 373:

**DISTRINGERE.** Lat. In feudal and old English law. To distrain; to coerce or compel; literally, to bind fast or strain hard.\* *Spelman. Calv. Lex. Jurid. Constringere* is used in this sense in old writs. *Spelman.*

**DISTURBANCE.** [L. Lat. *disturbantia, disturbatio.*] A wrong done to some incorporeal hereditament, by hindering or disquieting the owners in their regular and lawful enjoyment of it. *Finch, Law*, 187. 3 *Bl. Com.* 236. 2 *Crabb's Real Prop.* 1074, § 2472.—The wrongful obstruction of the owner of an incorporeal hereditament in its exercise or enjoyment. 3 *Steph. Com.* 510.

**DISTURBANCE OF FRANCHISE.** The disturbing or incommoding a man in the lawful exercise of his franchise, whereby the profits arising from it are diminished.\* 3 *Bl. Com.* 236. 3 *Steph. Com.* 510. 2 *Crabb's Real Prop.* 1074, § 2472 a. See *Franchise*. As to disturbance of office, see 1 *Crabb's R. P.* 466, § 595.

**DISTURBANCE OF COMMON.** The doing any act by which the right of another to his common is incommoded or diminished; as where one who has no right of common puts his cattle into the land, or where one who has a right of common puts in cattle which are not commonable, or surcharges the common; or where the owner of the land, or other person, incloses or otherwise obstructs it.\* 3 *Bl. Com.* 237—241. 3 *Steph. Com.* 511, 512. 1 *Crabb's Real Prop.* 312, § 348. See *Common*.

**DISTURBANCE OF WAYS.** The obstructing a person's right of way over another's grounds by enclosures, or other obstacles, or by ploughing across it, by which means he cannot enjoy his right of way, or at least not in so commodious a manner as he is entitled to do.\* 3 *Bl. Com.* 241. 3 *Steph. Com.* 513. 1 *Crabb's Real Prop.* 347, § 393. See *Way*. As to disturbance of the right to water, see 1 *Crabb's R. P.* 372, § 427; of the right to light and air. *Id.* 395, § 462.

**DISTURBANCE OF TENURE.** The compelling or inducing a tenant at will to leave his tenancy.\* 3 *Bl. Com.* 242. 3 *Steph. Com.* 513, 514.

**DISTURBANCE OF PATRONAGE.** The hindrance or obstruction of a patron from presenting his clerk to a benefice. 3 *Bl. Com.*

242. 3 *Steph. Com.* 514. 2 *Crabb's Real Prop.* 1075, § 2472 d. See *Advowson*.

**DIT.** L. Fr. [from *dire*, to say or speak.] Said. See *Il est dit*.

A word; a decree. *Kelham*.

**DITTAY.** In Scotch law. The manner of proceeding against a criminal in the court of justiciary. *Skene de Verb. Signif. voc. Iter. Tomlins.* A criminal information or accusation. 2 *Forbes' Inst.* 242, 362. Articles of dittay were the same as indictment. *Id. ibid.*

**DIVERSIS VICIBUS.** L. Lat. At different times. *Reg. Orig.* 272. *Hob.* 189 a.

**DIVERSITAS.** Lat. [L. Fr. *diversite.*] In old English law. Diversity; difference; unlikeness. *Si in scriptura inveniatur diversitas calami, et diversitas scribendi, et diversa manus*; if in the writing [or instrument] there be found a difference of pen, and a difference of writing, and a different hand. *Bract. fol. 398 b. Item diversitas incausti*; also a difference of ink. *Id. ibid. Diversite de mayn ou de enke en lescripture. Britt. c. 28.*

**DIVERSITE DES COURTS.** A treatise on courts and their jurisdiction, written in French in the reign of Edward III. as is supposed, and by some attributed to Fitzherbert. It was first printed in 1525, and again in 1534. *Crabb's Hist.* 330, 483. 3 *Bl. Com.* 53. 3 *Reeves' Hist.* 152. 4 *Id.* 420. 3 *Steph. Com.* 414.

**DIVERSO INTUITU.** Lat. With a different view, purpose or design; in a different view or point of view; by a different course or process. 4 *Kent's Com.* 211, note. 1 *Peters' R.* 500. 2 *Gallison's R.* 318. *Story on Bailm.* § 57.

**DIVERSORIUM.** Lat. [from *divertere*, to turn aside.] A lodging or inn. *Towns. Pl.* 38.

**DIVIDENDA.** L. Lat. [from *dividere*, to divide.] In old English law. A thing to be divided. An indenture is so called in old statutes. *Claus. 6 Edw. II. in dors. m. 24. Stat. de Escatoribus, 29 Edw. I. Cowell.* Because it was to be divided, or cut in two. See *Indenture*.

A part of an indenture. *Stat. 10 Edw. I. c. 11. Stat. 28 Edw. I. st. 3, c. 2. Termes de la ley.*

**DIVINARE.** Lat. To divine; to conjecture or guess; to foretell. *Divinatio*; a conjecturing or guessing.

*Nemo tenetur divinare.* No man is bound to divine; that is, to have foreknowledge of a future event. 10 Co. 55. No man is bound to guess at the intention of the parties to an instrument.

*Divinatio, non interpretatio est, quæ omnino recedit a litera.* That is guessing, not interpretation, which altogether departs from the letter. *Bacon's Max.* 18, (in reg. 3,) citing *Year-book*, 3 Hen. VI. 20.

**DIVISA, Devisa.** L. Lat. [from Fr. *diviser*, to divide.] In old English law. A division or partition. A division or distribution of goods by will; a will or testament of goods or chattels. *Spelman. Cowell. Glanv.* lib. 12, c. 20. *Id.* lib. 7, c. 5. Hence the modern *devise*, now confined to mean a will of lands or disposition of real estate by will. See *Devise*.

A division or boundary between neighboring or adjoining lands, (L. Fr. *devise*, q. v.) such as a highway; a wall, ditch or stream; a stake or stone. *Bract.* fol. 180 b. It might also be composed of the land itself, (*fit divisa de consensu vicinorum, ex eorum terra*.) in which case it was common to both proprietors, (*et est talis divisa communis inter eos*.) *Id. ibid.* *Id.* fol. 167. The use of strips of unploughed land, as boundaries in open or common fields, still prevails in England. *Stat. 6 & 7 Will.* IV. c. 115. *Dicitur divisa eo quod dividit agros et tenementa*; it is called *divisa* because it *divides* lands and tenements. *Bract.* fol. 180 b. The word was more commonly used in the plural, (*divisæ*, or *devisæ*.) and very frequently in connexion with the terms *metæ*, (metes,) and *bundæ*, (bounds,) though not very clearly distinguished from either. *Per metas et divisas.* *Reg. Orig.* 157 b. *Super bundis et divisis.* *Id.* 263 b. *Metæ, bundæ et devisæ.* *Reg. Jud.* 84 b. *Bundæ, et metæ et rationabiles divisæ, quæ ponuntur in terminis agrorum, ad distinguendum prædia et dominia vicinorum*; bounds and metes and reasonable divisions, which are placed in the limits of fields to distinguish the lands and properties of neighbors. *Bract.* fol. 166 b.

A sentence or decree. *Cowell. LL.* Hen. I. c. 9, cited *ibid.*

**DIVISIM.** L. Lat. In old English law. Severally; separately. *Bract.* fol. 47.

**DIVISUM IMPERIUM.** Lat. A divided empire or jurisdiction; a jurisdiction shared between two tribunals, or exercised

by them alternately.\* This classic phrase is frequently applied in the books to the jurisdiction alternately exercised by the courts of common law and admiralty between high and low water mark, where the sea ebbs and flows; the one having jurisdiction upon the water when it is full sea, and the other upon the land when it is an ebb. *Finch, Law*, 78. 5 Co. 107. 1 Bl. Com. 110. *Molloy de Jur. Mar.* 231. 1 Kent's Com. 366. It is applied also to the jurisdiction exercised by courts of common law and of equity over the same subject. 4 Steph. Com. 9.

**DIVORCE.** [Lat. *divortium*, from *divertere*, (anc. *divortere*.) to turn away, to separate; L. Fr. *devorce, devors*.] The separation of husband and wife by the sentence of the law.\* *Shelford Marr. & Div.* 363. — The lawful separation of husband and wife, made before a competent judge, on due cognizance had of the cause, and sufficient proof made thereof. *Ayliffe's Parergon*, 225. See *Godolph. Abr.* 493. — The dissolution of the marriage contract by law, either totally, (*a vinculo matrimonii*.) or partially, (*a mensa et thoro*.)\* 1 Bl. Com. 440, 441. 2 Steph. Com. 310, 311. 2 Kent's Com. 95, et seq. See *infra*.

The word *divorce* appears to be framed partly from the original Latin *divortium*, and partly from the old French form *devorce* or *devors*. *Divorce* is used by Littleton. According to Lord Coke, it is so called from *divertendo*, (turning away,) because a man is thus turned away from his wife; (*divortium dicitur a divertendo, vel divortendo, quia vir divertitur ab uxore*.) *Co. Litt.* 235. The derivation given in the civil law illustrates the facility with which the Roman divorces were allowed. *Divortium vel a diversitate mentium dictum est, vel quia in diversas partes eunt qui distrahant matrimonium*; divorce is so called either from *diversity* of minds, or because they who break off marriage go *different* ways. *Dig.* 24. 2. 2. It is worthy of remark that of the two great writers on the ancient law of England, Britton defines divorce to be nothing more than a separation of the bed; (*devorce nest autre chose que severaunce de lyt parentre espous et espouse*.) while Bracton makes a clear distinction between the two. *Britt.* c. 107. *Bract.* fol. 92 b. See *Divortium*.

**DIVORCE A VINCULO MATRIMONII.** A divorce from the bond of marriage. A total divorce of husband and wife, dissolving the marriage tie, and releasing the parties wholly from their matrimonial obligations.

1 *Bl. Com.* 440. 2 *Steph. Com.* 310, 311. *Shelford. Mar. & Div.* 363, et seq. 2 *Kent's Com.* 95.

**DIVORCE A MENSA ET THORO.** A divorce from table and bed, or from bed and board. A partial or qualified divorce, by which the parties are separated and forbidden to live or cohabit together, without affecting the marriage itself. 1 *Bl. Com.* 440. 3 *Id.* 94. 2 *Steph. Com.* 311. *Shelf. Mar. & Div.* 363, 364. 2 *Kent's Com.* 125. Called by Bracton *separatio thori*. *Bract.* fol. 92 b.

**DIVORTIUM.** Lat. In the civil and old English law. Divorce; a separation of husband and wife; a going different ways, (*in diversas partes*.) *Dig.* 24. 2. Distinguished from *repudium*, (q. v.) *Id.* 50. 16. 191. See *Divorce*. *Divortium sine causa*, or *sine ulla querela*; a divorce without cause, or without any complaint. 2 *Kent's Com.* 102.

Bracton appears to use *divortium* only to denote a separation *a vinculo*, or total divorce, as distinguished from a *separatio thori*. - *Bract.* fol. 92 b.

**TO DO.** This word was sometimes used in old law, in the sense of *to make*; both being translations of the Lat. *facere*, (q. v.) Thus, "to do law" and "to make law," signified the same thing. See *To make*. So the expression "we do you to wit," occurs as the translation of *scire facimus*, (we make you to know, or give you to understand.)

**DO.** Lat. I give. The ancient and aptest word of feoffment and of gift. 2 *Bl. Com.* 310, 316. *Co. Litt.* 9. Used by Bracton in all his examples and illustrations of conveyances. *Bract.* fol. 17, et *passim*. Probably the most ancient term of conveyance.

**DO, LEGO.** Lat. I give, I bequeath; or, I give and bequeath. The formal words of making a bequest or legacy, in the Roman law. *Titio et Seio hominem Stichum do, lego*; I give and bequeath to Titius and Seius, my man Stichus. *Inst.* 2. 20. 8, 30, 31. The expression is literally retained in modern wills. According to Calvin, who quotes Spiegelius, either of these words separately imports as much as both together. *Calv. Lex. Jur.*

**DO UT DES.** Lat. I give that you may give; I give [you] that you may give [me]. A formula in the civil law, consti-

tuting a general division under which those contracts (termed *innominate*) were classed, in which something was *given* by one party as a consideration for something *given* by the other. *Dig.* 19. 4. *Id.* 19. 5. 5. 2 *Bl. Com.* 444. I give you money, on a contract that you shall give me goods, and *è converso*;—the contract of purchase and sale. I give you goods, in consideration of your giving me other goods;—the contract of exchange or barter. I give you money now, in consideration or on condition of your giving it to me hereafter;—the contract of loan of money.\* *Id.* *Cooper's Justin. Inst. Notes*,\* 584. Bracton's example shows his familiarity with the civil law. *Do tibi digestum*, ut des *mihi codicem*; I give you a digest that you may give me a code. *Bract.* fol. 19. See *Do ut facias*.

**DO UT FACIAS.** Lat. I give that you may do; I give [you], that you may do or make [for me.] A formula in the civil law, under which those contracts were classed, in which one party gave or agreed to give money, in consideration the other party did or performed certain work. *Dig.* 19. 5. 5. 2 *Bl. Com.* 444. *Do tibi codicem*, ut facias *mihi scribi digestum*; I give you a code, that you may have a digest written (or copied) for me. *Bract.* fol. 19.

The particle *ut*, in this and the foregoing phrase, is considered as denoting or expressing a *consideration*; so much, that Blackstone has treated them as forms of consideration. 2 *Bl. Com.* *ub. sup.* Strictly, however, *ut* denotes what the civilians called *modus*, (qualification); *quia* being the particle employed to denote what they called *causa*, which is generally translated *consideration*. *Bract.* fol. 18 b. See *Consideration*, *Causa*. Britton calls these phrases or formulæ *conditions*, and repeats them after Bracton; but the passage in the original edition is much corrupted. *Britt.* c. 36. See *Jeo done*.

**DO, DICO, ADDICO.** Lat. I give, I say, I adjudge. Three words used in the Roman law, to express the extent of the civil jurisdiction of the prætor. *Do* denoted that he gave or granted actions, exceptions and judices, (*prætor dabat actiones exceptiones, judices*;) *dico*, that he pronounced judgment, (*dicebat jus*;) *addico*, that he adjudged the controverted property, or the goods of the debtor, &c. to the plaintiff. 1 *Mackeld. Civ. Law*, 187, Kaufmann's note. *Id.* 24, § 35, note (b). *Calvin Lex. Jur.*

**DOARIUM, Douarium, Dodarium, Do-**

*tarium, Dotalitium.* L. Lat. Dower. The use of these words is entirely confined to the early continental law of Europe, although, according to Spelman, they are the proper Latin equivalents of the English word *dower*; *dos*, (the term employed by all the English writers since Bracton to signify dower,) denoting properly quite a different thing. *Spelman. 2 Bl. Com.* 129. See *Dos, Dower*.

*Doarium* is mentioned in the early law of France, as the popular term for dower, or a widow's portion of her husband's estate. *Spelman. Calvin Lex. Jur.* *Douarium* occurs in the history of Bretagne in a similar sense. The latter word, sometimes inaccurately written *donarium*, comes very near the form of the English word *dower*. Both *doarium* and *douarium* are from the Fr. *douaire*, which seems also to be the root of the English word. *Dower* occurs in its present form in the Law French of Britton. *Britt. c.* 101.

DOAYRE. L. Fr. Dower. *Kelham*.

DOCERE. Lat. In the civil and old common law. To show; to make out a case by proper statements. *Cum querens—docuit tenementum esse suum, tenens, si possit, doceat, &c.*; when the plaintiff has shown [by his count or declaration,] the tenement to be his, the tenant if he can, may show, &c. *Bract. fol.* 209.

To show or establish by proof. *Et hoc paratus est docere*; and this he is ready to show, or verify. *Id. fol.* 216 b.

DOCKET, *Docquet, Dogget*. A brief or abstract in writing. *Cowell*. An abridged entry of an instrument, or proceeding in an action; a list or register of such abridged entries.

An abridged entry of a judgment; an entry made in a proper book, by the clerk of the court in which a judgment is recovered, containing an abstract of the judgment, that is, the title of the cause, amount of the judgment, time of the recovery, attorney's names, &c. *3 Bl. Com.* 397, 398. *2 Tidd's Pr.* 939. It is an index to the judgment. *Id. ibid.*

The list or calendar of causes ready for hearing or trial, prepared by clerks for the use of courts is, in some of the United States, called a *docket*. In England, the entry made in the docket book at the bankrupt office, on delivery of a petitioning creditor's affidavit and bond, is called *striking a docket*. *Eden's Bankr. Law, c.* 4, sec. 1.

In the old definitions, a docket is said to be "an abridged entry on a *small piece*

of paper or parchment." *West Symbol.* part 2, tit. *Fines*, sect. 106. The word however was used as far back as the statute 4 & 5 W. & M. c. 20 (A. D. 1692,) by which the docketting of judgments was first regulated, in the sense of an abridged entry in a book, which is its usual modern meaning. It is written *dogget* by West, (*ub. sup.*) and in the English statute just referred to. See the statute at large in *Miller's Law of Equitable Mortgages*, Appendix, No. I.

To DOCKET, *Docquet, Dogget*. To abstract and enter in a book. *3 Bl. Com.* 397, 398. To make an abridged entry of a judgment or other proceeding in a book kept for that purpose.\* See *Docket*.

*Dogget* is the word used in the statute 4 & 5 W. & M. c. 20. *Docquet* is used by Blackstone, (*ub. sup.*) *Docket* is the modern form. Townsend gives some curious old forms of *doggetting* causes. *Towns. Pl.* 159—162.

DOCTOR AND STUDENT. The title of a work written by St. Germain in the reign of Henry VIII. in which many principles of the common law are discussed in a popular manner. It is in the form of a dialogue between a Doctor of Divinity and a Student in Law, and has always been considered a book of merit and authority. *1 Kent's Com.* 504. *Crabb's Hist. Eng. Law*, 482.

DOCTORS' COMMONS. The popular name of the courts and offices occupied by the body incorporated in England in 1768, under the title of "The College of Doctors of Law, exercent in the ecclesiastical and admiralty courts"; and which are situated on the southern side of St. Paul's churchyard, London. It is a college consisting of a president, (the Dean of the Arches for the time being) and of those doctors of laws who having regularly taken that degree in either of the universities of Oxford and Cambridge, and having been admitted advocates in pursuance of the rescript of the Archbishop of Canterbury, shall have been elected fellows of the college in the manner prescribed by the charter. *Wharton's Lex. Brande*.

DOCUMENTS. [Lat. *documenta*, from *docere*, to show.] Written instruments adduced for the purpose of *showing* or proving a claim or title, or other matter in controversy; evidences of title.\* This term was anciently applied in particular to the

evidences of title to real property, or muniments of title, (*quibus jus prædiorum firmatur*;) and otherwise called *telligrapha*. *Spelman*. See *Telligraphum*.

Documents are a species of instruments of evidence, and, according to a modern writer on evidence, "properly include all material substances on which the thoughts of men are represented by any species of conventional mark or symbol. Thus, the wooden score on which a baker and his customers indicate by notches the number of loaves of bread supplied, the old exchequer tallies, and such like, are *documents* as much as the most elaborate deed." *Best on Evid.* 238.

**DODARIUM.** L. Lat. [from Lat. *dos*, q. v.] In old European law. Dower. Used in this sense in Hoveden, cited in *Spelman*, voc. *Doarium*. The same as *dotarium*, (q. v.) See *Doarium*.

**DODKIN.** See *Doitkin*.

**DODRANS.** Lat. In the Roman law. A subdivision of the *as*, containing nine *uncia*; the proportion of nine-twelfths, or three-fourths. 2 *Bl. Com.* 462, note.

**DOER.** In Scotch Law. An agent or attorney. 1 *Kames' Equity*, 325.

**DOG-DRAW.** In forest law. Drawing after, (that is, pursuing) a deer with a dog. One of the circumstances which constituted what was called the manifest deprehension of an offender against venison in a forest; that is, his being caught in the act of committing the offence, or taken with the mainour, as it was otherwise called.\* *Mainour*, part 2, c. 8. See *Mainour*.

**DOGGET.** See *Docket*.

**DOIGNE, Doyne.** L. Fr. I give. *Britt.* c. 36. See *Done*.

**DOIT.** L. Fr. He ought; he owes. *Doient, doyent*; they ought. *L. Fr. Dict.* *Kelham*.

**DOITKIN, Dotkin, Dodkin.** A foreign coin of small value, prohibited by statute 3 Hen. V. c. 1, from being introduced into England. *Crabb's Hist. Eng. Law*, 357. 3 *Reeves' Hist.* 261. 4 *Bl. Com.* 99. According to Mr. Crabb, it was the Dutch *duitkin*, of the value of two penningen.

**DOLE.** [L. Lat. *dola*, Sax. *dæl*; from *dalan*, to divide, or distribute.] In old

English law. A part or portion. *Spelman*. Dolemeadow was one in which several persons had a share. *Cowell*.

**DOLI CAPAX.** Lat. Capable of mischief or criminal intention; of the age of discretion; capable of distinguishing between good and evil. A phrase derived from the civil law, in which it was used in defining the liability of infants to punishment for crimes. *Dig.* 29. 5. 14. *Id.* 50. 17. 111. *Id.* 47. 2. 23. 1 *Bl. Com.* 464. 4 *Id.* 22. According to Bracton, a female is more *doli capax* than a male, as arriving sooner at maturity. *Bract.* fol. 86 b.

**DOLI INCAPAX.** Lat. Incapable of criminal intention; not of the age of discretion. 4 *Bl. Com.* 22, 23.

**DOLIUM.** L. Lat. A tun, or ton. 2 *Ld. Raym.* 1468.

**DOLUS.** Lat. In the civil law. Deceit; fraud. Otherwise called *dolus malus*, (q. v.) *Fraud* is the word most commonly used to define this term, but *deceit* appears to be the more strictly accurate expression. The civilians drew various distinctions between *dolus* and *fraus*, some of which seem to be still recognized; making the essence of the former to be the intention to deceive, while the latter imported actual damage or detriment. *Calvin Lex. Jur.* 2 *Kent's Com.* 560, note. Mr. Justice Story thinks it questionable whether *dolus* was used in the Roman law in the intense sense of the word *fraud* (that is intentional fraud,) in our law. *Story on Bailm.* § 20 a. In Scotch law it is translated by a word framed immediately from the Latin, viz. *dole*.

Design; evil or criminal intention; malice. *Si dolo aut culpa homo occisus fuerit*; if a man have been killed through design or carelessness. *Inst.* 4. 3. 14. See *Doli capax*.

**Dolus versatur in generalibus.** Fraud deals in generalities. 2 *Co.* 34 a. 3 *Id.* 81 a. Otherwise expressed, **Doleus versatur in generalibus.** A person intending to deceive deals in general terms. *Wingate's Max.* 636, max. 165. *Broom's Max.* 321.

**Dolus circuitu non purgatur.** Fraud is not purged by circuitry. *Bacon's Max.* 4.

**Dolus et fraus nemini patrocinantur, (patrocinari debent.)** Deceit and fraud shall excuse or benefit no man. *Yearbook* 14 Hen. VIII. 8. *Best on Evid.* 469, § 428. 1 *Story's Equity Jur.* § 395.

**Lata culpa dolo æquiparatur.** Gross negligence is tantamount to fraud, (or evil design.) See *Culpa*.

**DOLUS MALUS.** Lat. In the civil law. Fraud; evil design; the intentional endeavoring to injure another by fraudulent delusion or other unlawful means.\* Defined in the Digests, after Labeo, to be—*omnem calliditatem, fallaciam, machinationem ad circumveniendum, fallendum, decipiendum alterum adhibitam*; (every kind of craft, deceit and contrivance used to circumvent, deceive and mislead another.) *Dig.* 4. 3. 1. 2. Said to be so called to distinguish it from *dolus bonus*, (justifiable deceit) which was allowed in certain cases, as in self defence against an unlawful attack. 1 *Mackeld. Civ. Law*, 165, § 166. *Calvin's Lex. Jurid.*

**Ex dolo male non oritur actio.** Out of fraud no action arises. Lord Mansfield, *Cowp.* 341—343. A right of action cannot arise out of fraud. No contract can arise out of a fraud; and an action brought upon a supposed contract, which is shown to have arisen from fraud, may be resisted. *Broom's Max.* 349.

**DOM.** Sax. Judgment. Hence the English doom. See *Dome*.

**DOM. PROC.** An abbreviation of *Domus Procerum*, or *Domo Procerum*; the House of Lords in England. Sometimes expressed by the letters D. P. *Sugden's Law of Prop. passim*.

**DOMAIN.** [L. Lat. *domanium, domainium*.] Ownership of land, (*fundi proprietas*.) *Spelman*. Immediate or absolute ownership; paramount or ultimate ownership.\* The inherent sovereign power claimed by the legislature of a state, of controlling private property for public uses, is termed the right of *eminent domain*. 2 *Kent's Com.* 339.

An estate or patrimony which one has in his own right, (*quod quis proprio suo jure possidet*.) *Spelman*. Land of which one is the absolute owner.\* The public lands of a state are frequently termed the public domain, or domain of the state. 1 *Kent's Com.* 166, 259. 2 *Id.* 339, note.

**DOMBEC, Domboc.** Sax. [from *dom*, judgment, and *bec, boc*, a book.] Dome-book or doombook. A name given among the Saxons, to a code of laws. Several of the Saxon kings published *dombocs*, but the most important one was that attributed to Alfred. *Crabb's Hist.* 7. This is sometimes confounded with the celebrated *Domesday book*. See *Domebook, Domesday*.

**DOME, Doom.** [Sax. *dom*.] In old

English law. Judgment or sentence. "So help me God at the holy *dome*, and by this book." The oath of a juror, mentioned in the Black book of the Admiralty. *Molloy de Jur. Mar.* 104. "So help me God at his holy *dome*, and by my trowthe." The homager's oath in the Black book of Hereford. *Blount*.

The reversal of judgment or sentence was in old Scotch law called *falsing of domes*. *Cowell, voc. Domesmen*.

**DOME BOOK.** [Sax. *dombec*; Lat. *liber judicialis*.] A book or code said to have been compiled under the direction of Alfred, for the general use of the whole kingdom of England; containing, as is supposed, the principal maxims of the common law, the penalties for misdemeanours, and the forms of judicial proceedings. It is said to have been extant so late as the reign of Edward IV., but is now lost. 1 *Bl. Com.* 64, 65. This is stated by Blackstone on the authority of the early English historians, though Mr. Hallam considers their authority insufficient to establish the facts. 2 *Hallam's Middle Ages*, 402, (7th ed.) 1 *Steph. Com.* 41, 42.

**DOMESCHE.** L. Fr. Tame; domes-ticated. *Britt. c.* 24.

**DOMESDAY, Doomsday, Domesdei.** [from *dome* or *doom*, judgment, and *day*. See *infra*.] An ancient English record, made in the time of William the Conqueror, and by his command, containing the details of a great survey of the kingdom, including all the demesne lands of the crown, and completed A. D. 1087. It consists of two volumes, a greater and a less; the greater containing a survey of all the lands in England, (embracing thirty counties,) except the counties of Cumberland, Northumberland, Durham, and a part of Lancashire, which were not surveyed, and also Essex, Norfolk and Suffolk, which are comprehended in the lesser volume. 2 *Bl. Com.* 49, 99. *Spelman, voc. Domesdei. Cowell. Blount. Ducange. Crabb's Hist.* 52, 53. The original Domesday book is still in existence, fair and legible, and is preserved in the Chapter House at Westminster. It was formerly kept with great care in the Exchequer under three locks. *Spelman*. It is now printed, (its publication having been commenced in 1767 and completed in 1783,) and copies may be found in public libraries in this country, but being in the Latin of the times, with numerous contractions and abbreviations, its perusal is a work of very considerable difficulty.

This venerable record, which Spelman calls *monumentum totius Britanniae absque controversia augustissimum*, was anciently known in Latin by various names, all indicating the general object of its compilation; as *Liber Judiciarius*, (the judgment book), *Censualis Angliæ*, (the tax book of England), *Angliæ Notitia et lustratio*, (the survey of England); *Rotulus Regis*, (the king's roll); *Rotulus or Liber Wintoniæ*, (the roll or book of Winton.) The English term *Domesday*, appears to be compounded of *dome* or *dom*, (Sax. judgment,) and *day*, the precise meaning of which has been a matter of some doubt. Cowell supposes that it was made a part of the word not with any allusion to the final day of judgment, but to double and confirm the meaning, *day* having itself, in fact, the same meaning as *dome*, that is, judgment. Cowell, voc. *Daysman*. But that the idea of the day of judgment did enter into the original composition of the word seems clear from the testimony of the old chroniclers, who have taken some pains to explain it. In the Black book of the Exchequer it is said that this book is called by the native English *domesdei*, that is, the day of judgment, by a figure. (*Hic liber ab indigenis Domesdei nuncupatur, id est, dies judicii, per metaphoram.*) For as the sentence of that last severe and terrible ordeal cannot by any artifice be escaped, so where a controversy has arisen in the kingdom on subjects noticed in that book, and an appeal is made to it, its sentence can neither be impugned nor evaded with impunity. *Lib. Nig. Scacc.* par. 1. cap. antepenult. Again, Ingulphus has recorded that this roll was called by the English *Domesday*, from its comprehensiveness, embracing all the lands of the whole kingdom completely. (*Iste rotulus —ab Anglicis, pro sua generalitate, omnia tenementa totius terræ integrè continente, Domesday cognominatur.*) Ingulphus, cited in Spelman. These accounts of the origin of the word, given by writers nearly contemporary with the compilation of *Domesday* itself, are very forcibly expressive of the feelings with which this great survey of the conqueror was regarded by the native population (or *indigenæ*) of England; the searching minuteness of its details, and its overwhelming authority as a record, suggesting to the unlettered mind of the age a comparison with the dread book of final doom itself.

This great census appears to have been compiled in the following manner. The king sent five of his justices into every shire, to make the requisite inquiries by the oaths of persons living on the spot, (*per provin-*

*cialium jurajuranda.*) These persons, who are called *taxatores*, (assessors) were chosen from every neighborhood, and gave a particular description of their several districts, with estimates of value. Hence the unequalled minuteness of the survey, rendering almost literally true the words of Ingulphus, that there was not a hide of land in England but the king knew its value, and its owner's name, nor a pool nor a place (*nec lacus nec locus*), that was not described in the king's roll with its rent and income. Ingulph. *Hist. Croyl.* cited in Spelman. *Termes de la ley.*

The following sketch of the general plan of *Domesday* may serve to give some idea of its completeness as a census of England. It contains a description not only of each county, rape, lathe, hundred or wapentake, but even the smaller divisions, cities, boroughs, towns, castles, manors. Mention is made of the quantity of land in each case by the carve and acre, specifying not only whether demesne or tenemental, but its quality as whether arable, meadow, pasture, wood, fishery, marsh, common, &c., and sometimes how much live stock, as sheep, hogs, &c., was raised upon it: how many men each manor supported, and their condition, whether knights, husbandmen, laborers, slaves, (giving the distinctive names then used): what was the present value of its income, or what it paid as tax tribute, rent, services and customs; and what these were in the time of Edward the Confessor. This last feature of *Domesday* has probably led to the singular mistake of Fitzherbert and Coke, that it was compiled in the time of St. Edward. *F. N. B.* 16 D. 3 Co. pref. vii.

**DOMESMEN.** [Lat. *homines judicarii*.] In English law. Men appointed to *doom*, i. e. to determine or pronounce judgment in suits and controversies; an inferior kind of judges anciently so called. Cowell. See *Dome*.

Suitors in a court of a manor in ancient demesne, who were the judges there. *Termes de la ley.*

**DOMESTE.** L. Fr. [L. Lat. *domitus*.] Tame; domesticated. *Stat. West.* 1, c. 20. See *Domesche*.

**DOMESTIC ATTACHMENT.** In American law and practice. A species of attachment against the property of absconding, concealed or absent debtors, the principal peculiarities of which seem to be that it is for the benefit of all the creditors who come in and prove their demands, and that it may be



sued out for a debt not due. See 2 *Kent's Com.* 403, note. See *Foreign attachment*.

**DOMESTICUS.** Lat. In old European law. A seneschal, steward or major domo. *Spelman*.

A judge's assistant; an assessor. *Id.*

**DOMICELLUS.** L. Lat. [dimin. of *dominus*.] In old European law. A young lord. A title anciently given to the king's (natural) sons in France, and sometimes to the eldest sons of noblemen there. *Spelman*. *Blount*. *Spelman* says it answered to the Saxon *Adeling*, *Aetheling*.

**DOMICIL, Domicile.** [Lat. *domicilium*, from *domus*, house or home, and *colere* to keep.] The place where a person has his home. A residence at a particular place, accompanied with positive or presumptive proof of an intention to remain there for an unlimited time.\* 1 *Binney's R.* 349, note. This is the definition adopted by Dr. Phillimore, in preference to any of those given by the foreign publicists. *Phillimore on Domicil*, chap. ii. Domicil, he observes, answers very much to the common meaning of our word *home*, and where a person possessed two residences, the phrase *he made the latter his home* would point out that to be his domicil. *Id.*—The place where a person lives, or has his home; the place where he has his true, fixed, and permanent home, and principal establishment, and to which, whenever he is absent, he has the intention of returning. *Story's Conflict of Laws*, § 41. See 2 *Kent's Com.* 430, note. *Marshall, C. J.*, 8 *Cranch*, 253. The place in which a person has taken up his permanent residence. 1 *Mackeld. Civ. Law*, 142, § 136.

Many definitions have been given of this word, but the above appear to be the best. And see 1 *Peters' Cond. R.* 367, note. 3 *Id.* 228, note. *U. S. Digest and Supplement*, Domicil.

**DOMICIL OF ORIGIN.** [Lat. *domicilium originis*, vel *nativitatis*.] The home of the parents. *Phillimore on Domicil*, 25, 101. That which arises from a man's birth and connexions. 5 *Vesey Jr.* 750. The domicil of the parents at the time of birth, or what is termed the domicil of origin, constitutes the domicil of an infant, and continues until abandoned, or until the acquisition of a new domicil in a different place. *Marshall, C. J.*, 1 *Brock. R.* 389, 393. See 5 *Metcalf's R.* 587.

**DOMICILIUM.** Lat. Domicil; resi-

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dence. See *Domicil*. *Si in comitatu plura habeat domicilia, potius fiat ei summonitio ad domicilium ubi magis habitaverit, vel ubi majorem habuerit substantiam*. If he have several residences in the county, he should be summoned at the residence where he dwells most of his time, or where he has the largest estate. *Bract.* fol. 333 b.

**DOMINA.** L. Lat. A lady. *Bract.* fol. 116 b.

**DOMINICA PALMARUM.** (*Dominica in ramis palmarum*.) L. Lat. Palm Sunday. *Towns. Pl.* 131. *Cowell*. *Blount*.

**DOMINICUM.** L. Lat. [from *dominus*, lord, master.] In old English law. Demesne, demain or domain. That of which one is lord or master; that of which one has the exclusive control, (*de quo quis facere voluntatem suam potest*).\* Applied to the estate both of a feudal lord and his tenant.

A lord's own land or estate, (*patrimonium domini*); that portion retained in his own possession or control, as distinguished from that which was granted out to tenants; the former being said to be held in *dominico*, the latter in *servitio*. *Bract.* fol. 263. Land held in villenage, however, was considered as *dominicum*, the lord having the right to resume its possession at any time. *Id.* *ibid.* So was land let for a term of years. *Spelman*. See *infra*.

That portion of a lord's lands which was reserved for his own special use, as for the supply of his table, and the maintenance of his family. *Bract. ub. sup.* See *Demesne*. *Spelman* cites Choppinus (lib. 1, tit. 1, § 6) for the use of the word *domanium* in the old French law, in this sense, and traces its origin to *dominus*, the master or giver of an entertainment, in the Roman writers.

The estate which a free tenant (*liber tenens*), had in the land, fee, or tenement held by him of his lord. It was not the lord's fee in demesne, but the tenant's; the lord had nothing in the fee but the service; it was the tenant's fee in demesne, and the lord's fee in service. (*Dominus nihil habet in feodo nisi servitium; et sic erit feodum tenentis in dominico et feodum domini in servitio*.) *Bract.* fol. 46 b. That is, the lord could not, (so long as homage and service were rendered him,) interfere with the tenant's possession, nor prevent him from doing as he pleased with the tenement itself. He could not even prevent him from aliening it to another person, unless the tenant were expressly restrained from so doing by the terms of the original con-

veyance ( *in ipso donatione*.) *Id. ibid.* and fol. 45 b, 46. The tenant in fact was *dominus*, in the sense of *master*, he had the exclusive control of the fee; the *dominium* was in him, and not in the lord. Hence *dominium* came to signify that in which one had a free tenement (*liberum tenementum*) or freehold, and it made no difference whether another was in actual possession of the land as lessee for a term of years, as guardian, or the like. *Bract.* fol. 263. See *Id.* fol. 143 b, 209.

**DOMINICUM ANTIQUUM.** L. Lat. Ancient demesne. *Bract.* fol. 369 b.

**DOMINICUS.** L. Lat. [from *dominus*, lord.] Of, or belonging to the king or lord. *Dominicum bannum*; the lord's ban, the sovereign's edict. *Spelman.* *Dominici coloni*; those tenants who were bound to cultivate their lord's lands; *ascriptitii*, socmen. *Id.* See *Ascriptitii.* *Dominica curtis*; the lord's court. *Id.*

**DOMINION.** [Lat. *dominium*, q. v.] Ownership, or right to property. 2 *Bl. Com.* 1.

Sovereignty or lordship; as the dominion of the seas. *Molloy de Jur. Mar.* 91, 92.

**DOMINIUM.** Lat. [from *dominus*, lord or master.] In the civil and old English law. Ownership; property in the largest sense, including both the right of property and the right of possession or use. *De acquirendo rerum dominio*, (of acquiring the ownership of things) is the title of Bracton's second book; borrowed, doubtless, from the second book of Justinian's Institutes. Bracton employs also the plural *dominia*. Blackstone uses *dominium* as a synonyme of *dominium*, in which he is sustained by *Spelman.* 2 *Bl. Com.* 105. But see the next definition.

The mere right of property, as distinguished from the possession or usufruct. *Dig.* 41. 2. 17. 1. *Calv. Lex. Jur.* The right which a lord had in the fee of his tenant. In this sense the word is very clearly distinguished by Bracton from *dominium*, as in the following passage. *Nihil habuit in dominico nisi nudum dominium, s. homagium et servitium*; (he had nothing in demesne except the naked property, that is, homage and service.) *Bract.* fol. 27.

Sovereignty or dominion. *Dominium maris*; the sovereignty of the sea.

A lordship. *Towns. Pl.* 20.

**DOMINIUM DIRECTUM.** Lat. In the civil

law. Strict ownership; that which was founded on strict law, as distinguished from equity. 1 *Mackeld. Civ. Law*, 267, 268, Kaufmann's note.

In feudal law. Right or proper ownership; the right of a superior or lord, as distinguished from that of his vassal or tenant. *Id. ibid.* *Butler's Co. Litt.* Note 77, lib. 3. The title or property which the sovereign in England is considered as possessing in all the lands of the kingdom, they being holden either immediately or mediately of him as lord paramount. *Prædium domini regis est directum dominium, cujus nullus est author nisi Deus*; the estate of the king is right ownership, of which none but God is the source. *Co. Litt.* 1 b. 2 *Bl. Com.* 105.

Allodial property; that which is held of no superior. The phrase is used in this sense by Blackstone, who superadds the epithet *absolutum*, and makes *absolutum et directum dominium* to import the same with *dominium*. 2 *Bl. Com.* 105.

**DOMINIUM UTILE.** Lat. In the civil law. Equitable or prætorian ownership; that which was founded on equity. 1 *Mackeld. Civ. Law*, Kaufmann's note.

In feudal law. Useful or beneficial ownership; the usufruct, or right to the use and profits of the soil, as distinguished from the *dominium directum*, (q. v.) or ownership of the soil itself; the right of a vassal or tenant. 2 *Bl. Com.* 105. *Butler's Co. Litt.* Note 77, lib. 3.

Mr. Spence supposes that the divided ownership of lands, expressed by the terms *dominium directum* and *dominium utile*, was known to the Roman law; and hence deduces a principal argument in favor of the Roman origin of the feudal system. 1 *Spence's Chancery*, 28—34. But the use of these terms in the Roman law appears to have originated with the glossators, who erroneously applied the distinction between the *actiones directæ* and *utiles* to the contract of *emphyteusis*, (q. v.) 1 *Mackeld. Civ. Law*, 268, Kaufmann's note. See *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 1, §§ 337, 338.

**DOMINIUM DIRECTUM ET UTILE.** L. Lat. The complete and absolute dominion in property; the union of the title and the exclusive use. *Story, J., 7 Cranch's R.* 603.

**DOMINIUM EMINENS.** L. Lat. Eminent domain. *Cooper's Justin. Inst. Notes*, \*456, 457.

**DOMINUS.** Lat. In the civil law. Lord, master; one who has the control or property of a thing; owner; proprietor.\* *Dominus fundi*; owner of land or ground. *Inst.* 2. 1. 12. *Dominus soli*; owner of the soil. *Bract.* fol. 10. *Dominus edificii*; owner of the building. *Inst.* 2. 1. 29. *Dominus materiae*; owner of the materials. *Id.* 2. 1. 25. *Dominus litis*, (q. v.); one who had the control or management of a suit.

The owner or proprietor of a thing, as distinguished from him who has the usufruct, or right of using it; (*qui habet proprietatem, etsi usufructus alienus sit.*) *Dig.* 29. 5. 1. 1.

A master or principal; one under whose direction another acts. He who appointed a *procurator*, a proctor or attorney, to act for him was called his *dominus*, or master. *Dig.* 3. 3. 1. *Inst.* 3. 28. 1. *Id.* 4. 11. pr. 3. *Story on Agency*, § 3. The word was extensively used in this sense by the old writers on the law of England; sometimes with the addition of the adjective *principalis*, from which the modern word *principal* seems to be taken. *Bract.* fol. 42 b, 212 b, 262, 342 b. *Stat. Westm.* 2, c. 10. So in French, he who appointed an attorney to appear for him in court, was called his master, (*son maister.*) *Theoall Dig.* lib. 13, c. 15. So, a party who sent another to essoin for him was called his *dominus*. *Bract.* fol. 337 b.

**DOMINUS.** Lat. In feudal and ecclesiastical law. A lord, or feudal superior. *Dominus rex*; the lord the king; the king's title as lord paramount. 1 *Bl. Com.* 367. *Towns. Pl.* 149. *Dominus capitalis*; a chief lord. *Dominus medius*; a mesne or intermediate lord. *Dominus ligius*; liege lord or sovereign. 1 *Bl. Com.* 367.

Lord or sir; a title of distinction. It usually denoted a knight or clergyman; and according to Cowell was sometimes given to a gentleman of quality, though not a knight, especially if he were lord of a manor.

Spelman, in remarking on the assumption of this divine appellation by human sovereigns, and the higher dignitaries of church and state, takes notice of what he terms the modesty of the ancients in adopting it. As an evidence of this, he mentions the fact that when the christian emperors of Rome came to admit it among their other titles, it was first contracted (by omitting the letter i,) into *Domnus*; and that the Greek *Κόμης* was by a similar change con-

verted into *σιγος*, the remains of which are still preserved in the English and French *Sir, Sire*, (*Syr, Cyr*, from Gr. *σιγ.*) and the Italian and Spanish *Don* and *Dom*.

**DOMINUS LITIS.** Lat. In the civil law. Literally, owner of a suit; the client or party, as distinguished from the proctor or attorney; he whose suit it was.\* *Dig.* 3. 3. 31. pr. The word *dominus* is said to be here used in an improper sense. 1 *Mackeld. Civ. Law*, 268, 269, § 259, note.

At common law, if a party who had been vouched to warranty (*warrantus*), came into court and warranted the tenant, he was thereby made the *dominus litis*, that is, he took the tenant's place in the defence of the suit. *Bract.* fol. 260, 349 b.

**DOMITÆ NATURÆ.** Lat. [*domitus, domita*, tamed; from *domare*, to tame; L. Fr. *domeste, domesche*.] Of a tame or subdued nature or disposition. A phrase applied to tame domestic animals, (as horses, kine, sheep, poultry, &c.,) in which a man may have an absolute property, as distinguished from wild animals. 2 *Bl. Com.* 390. 2 *Kent's Com.* 348. 2 *Steph. Com.* 68. It seems properly applicable to wild animals that have been actually tamed, such as deer, swans, &c. *Bract.* fol. 9. See *Fera natura*.

**DOMNUS, Dompnus.** Lat. The contracted form of *dominus*, as formerly used in the titles of emperors, &c. *Spelman*. See *Dominus*.

**DOMUS.** Lat. A house or dwelling. *Inst.* 4. 4. 8. *Towns. Pl.* 183—185.

*Domus tutissimum cuique refugium atque receptaculum sit.* A man's house should be his safest refuge and shelter. *Dig.* 2. 4. 18. This maxim has been adopted in the common law, with a slight change in the phraseology. *Domus sua cuique est* [est unicuique] *tutissimum refugium*. To every man his own house is his safest refuge. 5 *Co.* 91 b. 11 *Id.* 82. 3 *Inst.* 162. The house of every one is to him as his castle and fortress, as well for his defence against injury and violence as for his repose. 5 *Co.* 91 b. *Broom's Max.* 205. A man's dwelling house is his castle, not for his own personal protection merely, but also for the protection of his family and his property therein. *Walworth, C.*, 4 *Hill's* (N. Y.) *R.* 437.

**DOMUS CONVERSORUM.** L. Lat. The house of converts. An ancient house or institution, (*Spelman* calls it *collegium*)

established by Henry III. for the benefit of such Jews as were converted to the christian faith. This continued to the reign of Edward III. who, having expelled the Jews from the kingdom, converted the building into a place for keeping the rolls and records of the chancery. *Spelman. Cowell, voc. Rolls.* It is now called the Rolls' Office in Chancery Lane, though in Latin the old name is sometimes retained. *Id. voc. Master of the Rolls.*

DON. L. Fr. A gift. *Britt. c. 34. See Done.*

DONARE. Lat. [from *donum*, a gift; L. Fr. *doner, donner.*] In civil and old English law. To give; to make a gift, (*donationem facere.*) *Inst. 2. 7. 1. Quis donare possit, et quis non;* who can make a gift and who not. *Bract. fol. 11 b.* The same as *dare.* *Id. fol. 12.*

DONATIO. Lat. [from *donum*, a gift, or *donare*, to give.] In the civil law. Gift, or donation: one of the modes of acquiring property. *Inst. 2. 7. pr. 1, 2.* This is of two kinds; *causa mortis*, and *inter vivos.* *Id. ibid. Bract. fol. 11. See infra.*

DONATIO. Lat. [L. Fr. *don, done, doun.*] In old English law. A gift of lands or chattels. *See Done.* Defined by Bracton to be a "certain institution, [or established mode of conveyance,] which proceeds from pure liberality and free will, under the compulsion of no law, [and has for its object] to transfer a thing to another;" (*quædam institutio, quæ ex mera liberalitate et voluntate, nullo jure cogente, procedit, ut rem transferat ad alium.*) *Bract. fol. 11. See Done.* *Donatio* appears to have been the most ancient mode (as *do, dedi, dabo* were the most ancient words) of conveying lands, comprehending a gift, grant or feoffment; the latter term signifying nothing more than the gift of a fee, (*donatio feudi.*) *Co. Litt. 9. Crabb's Hist. Eng. Law, 95.* The English "gift" has in modern times been appropriated to signify the conveyance of an estate tail. *2 Bl. Com. 316, 317.* But the Latin *donatio* is constantly used by Bracton in the largest sense, including as well a conveyance in fee simple, (*simplex et pura,*) as that which was qualified or conditional, (*conditionalis* or *sub modo.*) *Bract. fol. 11, 17.*

*Donatio simplex et pura;* a simple and pure gift; one which, without the compulsion of any law, civil or natural, and without the intervention of any reward, menace or force, proceeds from the pure and gratuitous

liberality of the donor, and where the donor in no case wills that what he has given, or promises to give, shall return to him. *Bract. fol. 11.* Otherwise called *donatio libera et pura*, (a free and pure gift.) *Id. fol. 11 b.*

*Donatio conditionalis;* a conditional gift, a gift under a condition or qualification, (*sub conditione vel sub modo.*) *Id. fol. 11.* These terms and distinctions are taken essentially from the civil law. *Calvin Lex. Jurid.*

*Donatio absoluta et larga;* an absolute and unlimited gift, as to a man and his heirs generally; [a gift in fee simple.] *Bract. fol. 11 b.*

*Donatio stricta et coarctata;* a gift restrained and narrowed, that is, to some particular heirs exclusive of others, (*sicut certis hæredibus, quibusdam vero a successione exclusis.*) *Id. ibid.* This answers to a gift in fee tail.

*Donatio non præsumitur.* A gift is not presumed. *Wharton's Lex.*

*Donatio perficitur possessione accipiencie.* A gift is perfected [made complete] by the possession of the receiver. *Jenk. Cent. 109, case 9.* A gift is incomplete until possession is delivered. *2 Kent's Com. 438.*

DONATIO CAUSA MORTIS. Lat. A gift in apprehension, expectation, contemplation or prospect of death.\* A conditional gift, dependent on the contingency of expected death. Gibson, C. J. *2 Wharton's R. 17, 22.* Blackstone has defined it to be "a death bed disposition of property, where a person in his last sickness, apprehending his dissolution near, delivers, or causes to be delivered to another the possession of any personal goods to keep in case of his decease." *2 Bl. Com. 514.* And this definition is essentially adopted by Tilghman, C. J. in *Wells v. Tucker*, *3 Binney's R. 366, 370.* It is however too narrow in so far as it confines this species of gift to cases of last illness, it being sufficient if the apprehension of death arise from other causes, as from infirmity, old age, or any external and anticipated danger. *Dig. 39. 6. 3. 3 Kent's Com. 444.* This is clearly shown by Gibson, C. J., from Justinian's Institutes, and appears also from the Digests, which are followed by Bracton. *2 Wharton's R. 17, 22. Inst. 2. 7. 1. Dig. 39. 5 & 6. Bract. fol. 60. Calv. Lex. Jurid. White's Lead. Eq. Cases, 614, (Am. ed.)*

A *donatio causa mortis* is sometimes considered as a species of legacy, and it is always accompanied with the implied trust

or condition that if the donor lives, the property shall revert to himself, being given only in contemplation of death. 2 *Bl. Com.* 514. 2 *Steph. Com.* 103, note (p) and cases cited *ibid.* *Ward on Legacies*, 55, ch. i. sect. iv. *Inst.* 2. 7. 1. *White's Equity Cases*, 602, 603. *Id.* 615, (Am. ed. note, where the American cases are given.) It is indispensable to its validity that it be accompanied and perfected by a present delivery of the subject of the gift, according to the manner in which it is capable of being delivered. *Id.* 604—607. *Id.* 615—619, (Am. ed.) 2 *Kent's Com.* 445—448, and notes. See 1 *Story's Eq. Jur.* §§ 606—607 d..

Donations or gifts of this kind are derived entirely from the civil law, and were introduced into England as early as the time of Bracton, who closely follows the language of the Digests. *Bract.* fol. 60. The first reported case on the subject of these gifts is said to be that of *Jones v. Shelby*, in 1710. *Prec. in Ch.* 300.

**DONATIO INTER VIVOS.** Lat. A gift between the living. The ordinary kind of gift by one person to another. 2 *Kent's Com.* 438. 2 *Steph. Com.* 102. A term derived from the civil law. *Inst.* 2. 7. 2.

**DONATIO PROPTER NUPTIAS.** Lat. In the civil law. A gift on account of marriage. *Inst.* 2. 7. 3. A gift made by a husband to his wife by way of security for her *dos* or marriage portion. *Hallifax Anal.* b. 2, ch. 5, num. 16. Called in Greek ἀντιδοτήριον, that is, a counter or mutual gift. *Calv. Lex. Jurid.* This was introduced by the later Roman emperors and at first called *donatio ante nuptias*, (a gift before marriage,) it being made upon the tacit condition that it should take effect when the marriage was celebrated, and it was never allowed after marriage. Justinian first allowed it as well after as before marriage, and accordingly changed its name to *donatio propter nuptias*. *Inst.* 2. 7. 3. Bracton uses it as another name for the old English dower *ad ostium ecclesie*, or dower according to the custom of England. *Bract.* fol. 92 b. See *Dower, Dos*.

**DONATION.** In ecclesiastical law. A mode of acquiring a benefice by deed of gift alone, without presentation, institution or induction. 3 *Steph. Com.* 81.

**DONATIVE ADVOWSON.** In ecclesiastical law. A species of advowson, where the benefice is conferred on the clerk by the patron's deed of donation, without pre-

sentation, institution or induction. 2 *Bl. Com.* 23. *Termes de la ley*.

**DONATOR.** Lat. [from *donare*, q. v. L. Fr. *donour*.] In civil and old English law. A donor or giver; the party who makes a *donatio*, or gift. *Bract.* fol. 11, *et seq.*

*Donatorius*, (properly *Donatarius*); a donee; a person to whom a gift is made; a purchaser. *Id.* fol. 13, *et seq.*

*Donator nunquam desinit possidere. antequam donatorius incipiat possidere.* The giver never ceases to possess until the donee begins to possess. *Bract.* fol. 41 b.

**DONE, Don, Down.** L. Fr. [from Lat. *donum*.] A gift. *Don est un nosme general plus que ne feffement*; gift is a more general name than feoffment. *Britt.* c. 34.

Given. *Done a Londres, &c.*; given at London, &c. *Stat. of Tithes*, 2 *Inst.* 639.

**DONEC.** Lat. Until. A word of limitation in old conveyances. *Co. Litt.* 235 a.

**DONEE.** [L. Lat. *donatarius, donatorius*.] In old English law. He to whom lands were given; the party to whom a *donatio* was made. See *Donatio, Donatorius*.

In later law. He to whom lands or tenements are given in tail. *Litt.* sect. 57.

In modern and American law. The party executing a power; otherwise called the *appointer*. 4 *Kent's Com.* 316. Called in New-York the *grantee*. 1 *Rev. Stat.* [738], 730, § 135.

**DONOR.** [from L. Fr. *donour*; Lat. *donator*.] In old English law. He by whom lands were given to another; the party making a *donatio*, (q. v.) See *Donator*.

In later law. He who gives lands or tenements to another in tail. *Litt.* sect. 57. *Termes de la ley*.

In modern and American law. The party conferring a power. 4 *Kent's Com.* 316. Called in New-York the *grantor*. 1 *Rev. St.* [738], 730, § 135.

**DONQUE, Donques, Adonques, Done, Dunc, Dunk, Dunky.** L. Fr. Then. *Britt.* c. 30, *et passim*. *Litt.* sect. 157. *Kelham*.

**DONUM.** Lat. In the civil law. A gift; a free gift. *Calv. Lex. Jur.* Distinguished from *munus*. *Dig.* 50. 16. 194.

**DORMANT.** Fr. & Eng. [from Fr. *dormir*; Lat. *dormire*, to sleep.] Sleep-

ing; suspended; not active; not in exercise; out of view; not apparent; not known.

A *dormant* partner is one whose name is not known, or does not appear as partner, but who nevertheless is a silent partner, and partakes of the profits, and thereby becomes a partner, either absolutely, to all intents and purposes, or at all events, in respect to third persons. According to Mr. Justice Story, dormant partners, in strictness of language, mean those who are merely passive in the firm, whether known or unknown, in contradistinction to those who are active and conduct the business of the firm as principals. *Story on Partn.* § 80.

The term *dormant* is sometimes applied to an execution when it is delivered to the sheriff with directions to levy merely, and not to sell until a junior execution is received. 2 *Hill's* (N. Y.) *R.* 364.

*Dormiunt aliquando leges, nunquam moriuntur.* The laws sometimes sleep, never die. 2 *Inst.* 161.

DORS, *Dorse, Dorce.* L. Fr. [from Lat. *dorsum*.] The back. *Kelham. L. Fr. Dict.*

DORSUM. Lat. The back. *In dorso recordi*; on the back of the record. 5 *Co.* 44 b.

DOS. Lat. In the Roman law. A sum of money given to a husband to enable him to sustain the burdens of marriage; (*pecunia data marito ad sustinenda matrimonii onera.*) *Heinecc. El. Jur. Civ. lib. 2, tit. 8, § 465.* The portion which was given with a woman to her husband in marriage; corresponding with what was called in the common law *maritagium*, or marriage portion. 1 *Reeves' Hist. Eng. Law*, 103. *Co. Litt.* 31 a. *Bract. fol. 92.* Properly translated by the word *dowry*. *Macqueen on Husb. & Wife*, 151, note.

*Dos profectitia* was that species of dowry or portion which proceeded from, (*profecta*), or was given by the father or relative (*parente*) of the male sex, out of his property or by his act. *Calvin Lex. Jur.*

*Dos adventitia* was that kind of portion which was bestowed by a stranger, (*ab extraneo*.) *Id.* Bracton adopts these terms and distinctions, but defines the *dos profectitia* to be that which was given by the father or mother or other relative, at the time of the contract for marrying the daughter; and the *dos adventitia* to be that which was bestowed by others than the father or

mother, whether it were a relative or stranger. *Bract. fol. 92 a, b.*

DOS. L. Lat. In old English law. That property or portion which a freeman gave to his wife at the door of the church, in consideration of the nuptials that were about to take place, and the burden of matrimony; and intended for the support of the wife and education of the children, in case the husband should die before her; (*id quod liber homo dat sponse sue ad ostium ecclesie, propter nuptias futuras et onus matrimonii, et ad sustentationem uxoris et educationem liberorum, cum fuerint procreati, si vir premoriatur.*) *Bract. fol. 92.* Usually translated *dower*; and otherwise called by Bracton, *dos mulieris secundum consuetudinem Anglicanam*; the wife's dower according to the custom of England. *Id. fol. 92 b.* 1 *Reeves' Hist.* 100. See *Dos rationabilis*.

In later law. Dower, in the modern sense. 2 *Bl. Com.* 129, 134. See *Dower*.

The use of this word to signify the *dower* of the common law, though established by long usage, is, as Spelman has shown, an obvious misapplication. *Dos* was used in the Roman law in the opposite sense of a marriage portion. 2 *Bl. Com.* 129. See *supra*. Hence, Tacitus remarked it as a singularity among the ancient Germans, that instead of the wife bringing a portion to the husband, the husband conferred it on the wife. *Dotem non uxor marito, sed uxori maritus offert.* *De Morib. Germ.* c. 18. *Dos* was used in the English sense of dower as early as the time of Glanville, though that writer takes notice that in the Roman law it had a different meaning. *Glanv. lib. 6, c. 1.* Bracton constantly employs *dos* in the sense of dower, (sometimes qualifying it as *dos rationabilis*, (q. v.) and *dos mulieris*), though he adopts the Roman phrases *dos profectitia*, *dos adventitia*, in which *dos* denoted the reverse of dower. *Bract. fol. 92 a, b.* The proper Latin word for dower, according to Spelman, is *doarium*, a term used in that sense in the early continental law of Europe. See *Doarium*.

*Dos de dote peti non debet.* Dower ought not to be demanded of dower. *Co. Litt.* 31. 4 *Co.* 122 b. A widow is not dowable of lands assigned to another woman in dower. 1 *Hilliard's Real Prop.* 135.

*Doti lex favet; premium pudoris est, ideo parcat.* The law favors dower; it is the reward of modesty, therefore it should be spared. *Branch's Princ. Co. Litt.* 31.

**Ubi nullum matrimonium, ibi nulla dos.** Where there is no marriage, there is no dower. *Bract.* fol. 92. To entitle a woman to dower, she must be the actual wife of the party at the time of his decease. 2 *Bl. Com.* 130.

**DOS RATIONABILIS.** L. Lat. In old English law. Reasonable dower. *Rationabilis dos est cujuslibet mulieris de quocunque tenemento, tertia pars omnium terrarum et tenementorum, quae vir suus tenuit in dominico suo, et ita in feodo, quod eam inde dotare poterit die quo eam desponsavit.* Reasonable dower is [the right] of every married woman, out of every kind of tenement, [being] the third part of all the lands and tenements which her husband held in his demesne and in fee, so that he might endow her thereof on the day he married her. *Bract.* fol. 92. This passage is quoted by Lord Coke. *Co. Litt.* 33 b.

This kind of dower was otherwise called dower by the common law. 2 *Bl. Com.* 134.

**DOT.** Fr. In the civil law. Dowry, or marriage portion. *Civ. Code of Louis.* art. 2317.

**DOTAL.** [From Lat. *dotalis*.] Relating to the marriage portion of a woman; constituting or comprised in her portion.\* *Wharton's Lex.*

This word is not properly applicable to dower, the Lat. *dotalis* from which it is formed being a term of the Roman law, derived from *dos* in the Roman sense. *Dotale prædium*; the dotal estate. *Inst.* 2. 8. pr.

**DOTALITIUM.** L. Lat. In canon and feudal law. Dower. *Spelman voc. Doarium.* *Calv. Lex. Jurid.* 2 *Bl. Com.* 129. Used as early as A. D. 841.

**DOTARE.** Lat. [from *dos*, q. v.] To endow; to give a dowry or dower. *Bract.* fol. 93, 94. *Dotata*; endowed. *Id. ibid.*

**DOTARIUM.** L. Lat. In early European law. Dower. *Spelman voc. Doarium.*

**DOTISSA.** [L. Lat. from *dos*, dower.] A dowager. *Towns. Pl.* 149.

**DOTKIN.** See *Doitkin*.

**DOUARIUM.** See *Doarium*.

**DOUBLE BOND.** In Scotch law. A bond with a penalty, as distinguished from a single bond. 2 *Kames' Equity*, 359.

**DOUBLE COSTS.** In practice. The ordinary single costs of suit, and one half of that amount in addition. 2 *Tidd's Pr.* 987. Double is not used here in its ordinary sense of *twice* the amount. These costs are now abolished in England by statute 5 & 6 Vict. c. 97. *Wharton's Lex.*

**DOUBLE FINE.** In old English law. A fine *sur done grant et render* was called a double fine, because it comprehended the fine *sur cognizance de droit come ceo, &c.*, and the fine *sur concessit*. 2 *Bl. Com.* 353.

**DOUBLE INSURANCE,** (or ASSURANCE.) The insurance of property twice by the party insured, on the same risk.\* A double insurance is where the party insured makes two insurances on the same risk and the same interest. 3 *Kent's Com.* 280. See 2 *Steph. Com.* 175. *Park on Ins.* 280. This is not to be confounded with *re-assurance*, which is made by the insurer. See *Re-assurance*.

**DOUBLE PLEA.** [L. Lat. *duplex placitum*.] A plea which contains several distinct answers to the plaintiff's declaration.\* *Steph. Pl.* 251, 252. A plea containing several distinct matters in answer to different parts of the declaration, where either of such matters alone is a sufficient answer to the whole.\* *Id. ibid.* See *Arch. Civ. Pl.* 174. A plea containing an averment or denial of several facts, constituting distinct points or defences.\* 1 *Burr.* 316. The averment of several facts going to make up one point will not render a plea double. 1 *Smith's Lead. Cas.* 249, (Am. ed. note.)

**DOUBLE QUARREL.** See *Duplex querela*.

**DOUBLE VOUCHER.** In a common recovery. A voucher over; a voucher by a party who had himself been vouched.\* It was formerly usual, first to convey an estate of freehold to some indifferent person, against whom the præcipe was brought; and then he vouched the tenant in tail, who vouched over the common vouchee. *Id. ibid.* See *Voucher*.

**DOUBLE WASTE.** The name given to that species of waste where a tenant suffers a house to be wasted, and then fells timber to repair it. *Co. Litt.* 53 b.

**DOUCE, Douze.** L. Fr. Twelve. *Reconnaissance de douze jurours.* *Britt.* c. 90.

**DOUN.** L. Fr. A gift. Otherwise

written *don* and *done*. The thirty-fourth chapter of Britton is entitled *De Douns*.

**DOUNT.** L. Fr. Wherefore; from whence. *Kelham. Britt.* c. 110.

Whereof, out of which. *Id. ibid.*

**DOUTER, Doubter.** L. Fr. To doubt; to fear or apprehend. *Kelham.*

**DOW.** [Lat. *dotare*.] To give, or endow. *Cowell.*

**DOWABLE.** [Lat. *dotabilis*.] Entitled to be endowed.

**DOWAGER.** [L. Lat. *dotata, dotissa*.] In English law. A widow endowed, or who has a jointure. *Blount.* A widow who either enjoys a dower from her deceased husband, or who has property of her own brought by her to her husband on marriage, and settled on herself after his decease. *Brande.*

A title given in England to a widow lady, to distinguish her from the wife of her husband's heir, having the same title. *Brande.* It is applied chiefly to the widows of princes dukes and other personages of rank and title. *Cowell. Blount.* A queen dowager is the widow of the king. 1 *Bl. Com.* 223.

**DOWARIE.** L. Fr. Dower. *Britt.* c. 47.

**DOWE.** L. Fr. Endowed. *Britt.* c. 110.

**DOWER.** L. Fr. & Eng. [L. Lat. *dos, dos mulieris, doarium, douarium, dotarium, dodarium, dotalitium, triens, tertius*; L. Fr. *douarie, douaire, dower*; Scotch, *terce*.] That portion (usually one third) of a man's lands and tenements which his widow is entitled, after his death, to have and hold for the term of her natural life, for the sustenance of herself, and the nurture and education of her children. *Co. Litt.* 30 b. *Litt.* sect. 36. *Bract.* fol. 92, 92 b. 2 *Bl. Com.* 129, 130. 2 *Steph. Com.* 302. 2 *Crabb's Real Prop.* 124, § 1117. 4 *Kent's Com.* 35. *Macqueen Husb. & Wife*, 158. The estate or interest of the widow in such portion is called an *estate in dower*, and she herself is termed *tenant in dower* (*tenens in dote*.) *Co. Litt.* 30 a. See *Estate in dower, Dos*.

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Dower is now given to the widow by the express provision of the law, but was anciently conferred in England by the act of the husband himself, who endowed his wife at the church door, at the time of the es-

pousals, with the whole of his lands or such part as he pleased, specifying the same; which was called the *constitutio dotis*, or establishment of dower. See *Dower ad ostium ecclesiae*. If no specific dotation of this kind was made by the husband, the common law gave the wife the *third* part (which was called her *dos rationabilis*, q. v.) of such lands and tenements as the husband was seised of at the time of the espousals, or, in Bracton's language, of which he might then have endowed her. 2 *Bl. Com.* 134. *Bract.* fol. 92. This is the origin of the modern dower, and is expressly confirmed by Magna Charta, c. 7. The ancient mode of endowment at the church door, by the husband, is supposed by some to be derived from the *donatio propter nuptias* of the Roman law, and Bracton calls it expressly by that name. *Long's Discourses*, 99—102. *Bract.* fol. 92 b. But see 2 *Bl. Com.* 129. *Spelman*, voc. *Doarium. Cruise Dig.* tit. Dower.

The word *dower* itself is derived by Spelman from the Fr. *douaire*, as are also the Lat. *doarium*, and *douarium*. It occurs in its present form at a very early period, being constantly used as a law French word by Britton, whose several chapters on this subject are entitled *De Dowers, De établissement de dower, De assignement de dower*, and *De remedy de dower*. *Britt.* cc. 101, 102, 103, 104. *Dowar* or *douar* may have been an earlier form. *Dower* is also used in the original law French of Littleton.

#### DOWER BY THE COMMON LAW.

[L. Lat. *dos per communem legem*.] The ordinary kind of dower in English and American law, consisting of one third of the lands of which the husband was seised in fee at any time during the coverture. *Litt.* sect. 36. 2 *Bl. Com.* 132. 2 *Steph. Com.* 302. 4 *Kent's Com.* 35. 1 *Greenleaf's Cruise's Dig.* [183], 165, note. See *U. S. Dig.* Dower and Curtesy.

The law of dower in England has been materially modified of late, by the statute called the Dower Act, 3 & 4 Will. IV. c. 105.

**DOWER BY CUSTOM.** A kind of dower in England, regulated by custom, where the quantity allowed the wife differed from the proportion of the common law; as that the wife should have half the husband's lands, or, in some places, the whole; and in some, only a quarter. 2 *Bl. Com.* 132. *Litt.* sect. 37.

#### DOWER AD OSTIUM ECCLESIAE.

L. Lat. Dower at the church door or



porch. An ancient kind of dower in England, where a man, (being tenant in fee simple, of full age,) openly *at the church door*, where all marriages were formerly celebrated, after affiance made and troth plighted between them, *endowed* his wife with the whole of his lands, or such quantity as he pleased, at the same time specifying and ascertaining the same. *Litt. sect. 39. 2 Bl. Com. 133.* According to Bracton the endowment was made before the espousal, at the commencement of the contract, (*ante desponsationem, in initio contractus.*) *Bract. fol. 92.*

This appears to have been the original English dower, and is supposed by some to have been derived from the *donatio propter nuptias* of the civil law. See *Dower*. It was formerly the most usual species of dower, and though latterly fallen into disuse was not abolished until the recent statute of 3 & 4 Will. IV. c. 105, s. 13. *2 Bl. Com. 133—135. 1 Steph. Com. 252, 253.* The wife might be endowed of personalty or goods as well as of lands, and a trace of this ancient kind of dower is still distinctly preserved in the marriage ritual of the church of England, in the expression "with all my worldly goods I thee endow." See *2 Bl. Com. 134, note (p).*

**DOWER DE LA PLUS BEALE.** L. Fr. Dower of the fairest [part]. A species of ancient English dower, incident to the old tenures, where there was a guardian in chivalry, and the wife occupied lands of the heir as guardian in socage. If the wife brought a writ of dower against such guardian in chivalry, he might show this matter, and pray that the wife might be endowed *de la plus belle* of the teneement in socage. *Litt. sect. 48.* This kind of dower was abolished with the military tenures. *2 Bl. Com. 132.*

**DOWER EX ASSENSU PATRIS.** L. Lat. Dower by the father's assent. A species of dower *ad ostium ecclesie*, made when the husband's father was alive, and the son, by his consent expressly given, endowed his wife with parcel of his father's lands. *Litt. sect. 40. 2 Bl. Com. 133.*

**DOWMENT.** L. Fr. Endowment. A word used by Littleton in nearly the sense of *dower*. *Dower que est appelle dowment ad ostium ecclesie, et dower appelle dowment, &c.*; dower which is called dowment at the church door, and dower called dowment, &c. *Litt. sect. 38.*

**DOWRY.** The portion or property which the wife brings her husband in marriage; which, if in lands, was anciently called *frankmarriage*, or *marriage*, (*maritagium*); if in money, goods or chattels, a marriage portion. *Co. Litt. 31 a.* See *Maritagium*. It expresses the proper meaning of the *dos* of the Roman, and *dot* of the French law, but is a very different thing from *dower*, with which it has sometimes been confounded.

**DOY.** L. Fr. Owe; ought. *Sauve la foy que jeo doy au roy*; saving the faith which I owe to the king. *Britt. c. 68.* See *Doit*.

**DOYNE, Doigne.** L. Fr. Give. *Jeo te doyne*; I give you. *Britt. c. 38.*

**DOZ, Doze, Dozze, Dozime, Dozine.** L. Fr. Twelve; the twelfth. *Kelham.*

**DOZYME.** L. Fr. Twelve. *A par-faire sa ley ove sa dozyme meyn*; to perfect his law with his twelve hand. *Britt. c. 27.*

**DR.** An abbreviation of *Droit*. *Kelham.*

**DRACHMA.** A term employed in old pleadings and records, to denote a groat. *Towns. Pl. 180.*

An Athenian silver coin, (*δραχμή*), of the value of about 7½d. sterling.

**DRAFT, Draught.** The common term for a bill of exchange; as being *drawn* by one person on another. *2 Bl. Com. 467.*

An instrument or paper as first, or originally *drawn*, or roughly written before it is copied or engrossed.

**DRAWBACK.** In commerce. An allowance made to merchants on the re-exportation of certain goods, which in some cases consists of the whole, in others of a part of the duties which had been paid upon the importation. *Encyclop. Americ.* See *Debenture*.

**DRAWEE.** [L. Lat. *trassatus*.] In mercantile law. The person to whom a bill of exchange is addressed, or on whom it is drawn. *3 Kent's Com. 75. Story on Bills, § 115.*

**DRAWER.** [L. Lat. *trassans*.] In mercantile law. The person who draws a bill of exchange. *3 Kent's Com. 75. Story on Bills, § 114.*

**DRAWLATCHES.** In old English law. Thieves or robbers. *Stat. 5 Edw. III. c. 14. 7. Ric. II. c. 5. Lambard Eiren-arch. lib. 2, c. 6. Cowell.*

**DREIT, Drect, Drett.** L. Fr. Right. The same as *droit*, (q. v.) These forms of the word show very clearly the derivation, through the L. Lat. *derittum, derictum*, from the Lat. *directum*, (qq. v.)

**DREIT DREIT.** L. Fr. [Lat. *jus duplicatum*.] Double right. The right of possession and the right of property united. (*Est jus possessionis et jus proprietatis*.) *Bract. fol. 206 b, 283 b. See Droit Droit.*

**DRENCHES, Drenches.** [L. Lat. *drengei*.] A species of tenants mentioned in Domesday book, whom Spelman supposes to have been military vassals or tenants by knight-service. The same author quotes an old MS. record of the family of Sharnburn, in Norfolk, from which it would appear that the name was given to certain tenants in *capite*, who, at the coming of William the Conqueror, being put out of their estates, were afterwards, upon complaint being made to him, restored to them, on their making it appear that they were owners thereof, and had taken no part against him either by aid or counsel, (*in consilio et auxilio*.) *Spelman.* According to Lord Coke, who spells the word *dreuchs*, they were free tenants of a manor. *Co. Litt. 5 b.*

**DRENER.** See *Derener*.

**DRENGAGE.** [L. Lat. *drengagium*.] The tenure by which the *drenches* (q. v.) held their lands. *Spelman.*

**DREYN, Drein.** L. Fr. Forms of *Darrein*, (q. v.)

**DRIFT.** [Lat. *agitatio*.] In old English law. A driving. A term applied to cattle. See *infra*.

**DRIFT OF THE FOREST.** [L. Lat. *agitatio animalium in foresta*.] In forest law. An examination or view of cattle in a forest; formerly made at certain times in the year, by the officers of the forest, by *driving* all the cattle into some pound or enclosed place, in order to see whose they were, and whether they were commonable, and whether the forest were surcharged or not. *Manwood, part 2, c. 15. 4 Inst. 309. Termes de la ley. See Common, Forest.*

**DRIFT WAY.** [L. Lat. *actus, drova*.]

A way, road or path used for driving cattle. *Co. Litt. 56 a. See Actus, Drift.* A term used in the state of Rhode Island. *2 Hilliard's Real Prop. 33.*

**DRINCLEAN.** Sax. A contribution of tenants, in the time of the Saxons, towards a potation, or ale, provided to entertain the lord, or his steward. *Cowell. See Cervisarii.*

**DRIP.** [Lat. *stillicidium*.] A species of servitude derived from the civil law, by which one man engages to permit the waters flowing from the roof of his neighbor's house to fall [or drip] on his estate. *3 Kent's Com. 436. 2 Hilliard's Real Prop. 85. See Stillicidium.*

**DROFDENE, Drofden.** Sax. A grove, or woody place, where cattle were kept. *Cowell. Blount.*

**DROFLAND.** Sax. [from *dryfene*, driven.] A quit rent, or yearly payment, formerly made by some tenants to the king, or their landlords, for *driving* their cattle through a manor to fairs or markets. *Cowell. Blount.*

**DROIT, Droict, Dreit.** L. Fr. [Lat. *jus, rectum, directum*.] Right, justice. *Co. Litt. 158 b. See Directum, Right.*

A right. See *infra*, and see *Jus*.

A writ of right, so called in the old books. *Co. Litt. 158 b.*

Law. The common law is sometimes termed *common droit*. *Litt. sect. 213. Co. Litt. 142 a. See Common Law.*

**Droit ne done plus que soit demande.** The law gives not more than is demanded. *2 Inst. 286.*

**Droit ne peut pas merier.** Right cannot die. *Jenk. Cent. 100, case 95.*

**DROIT D'AUBAINE (D'AUBAIGNE, and sometimes DROIT D'AUBENAGE.)** L. Fr. [L. Lat. *jus albinatus, jus albanagii*.] A right or prerogative of the sovereigns of some countries in Europe, entitling them, on the death of an alien or stranger, to all he was worth, unless he had a particular exemption. *1 Rob. Charles V. Appendix, Note xxix. 1 Bl. Com. 372.* This was particularly the case in France, where from the time of Charlemagne, down to within a recent period, a stranger could not, except by special favor, dispose of his property by will, and when he died, the sovereign or lord of the barony succeeded by right of inheritance to his estate. *Id. ibid. Spelman, voc. Albanus. Ducange, voc. Albani. Re-*

*pertoirè de Jurisp. par Merlin*, tit. *Aubaine*. 2 *Kent's Com.* 67—69. It was abolished in 1791, but revived under Napoleon, and was finally abolished only in 1819. *Id. ibid.* It appears, however, to have survived in other places to the present day, being formally relinquished as a subsisting right, in treaties made very recently between the United States and several of the European powers. *Convention with Hesse Cassel*, March 25, 1844, Art. 1. *Convention with Wurttemberg*, April 10, 1844.

The etymology of *aubaine* has been variously given. Nicot says it was anciently spelt *hobaine* from the verb *hober*, which signifies to remove from one place to another. *Thresor de la Lang. Franc.* fol. Paris, 1606. Cujacius derives the word from the Lat. *advena*, a foreigner or stranger. *Cujac. Opera*, fol. Neap. 1758, tom. ix. col. 1719. Spelman derives it from the Lat. *alibi natus*, (a person born elsewhere) which seems the best explanation. *Spelman*, voc. *Albanus*. *P. Cyclop.* voc. *Aubaine*.

**DROIT DE BRIS.** L. Fr. A right formerly claimed by the lords of the coasts of certain parts of France, to shipwrecks, by which not only the property, but the persons of those who were cast away, were confiscated for the prince who was lord of the coast. Otherwise called *droit de bris sur le naufrages*. This right prevailed chiefly in Bretagne, and was solemnly abrogated by Henry III., as duke of Normandy, Aquitaine and Guienne, in a charter granted A. D. 1226, preserved among the rolls at Bordeaux. *Laws of Oleron*, Art. xxvi. Note. 1 *Peters' Adm. Decis.* Appendix.

**DROIT DROIT.** L. Fr. [L. Lat. *jus duplicatum*.] In old English law. A double right. The right of possession united with the right of property. 2 *Bl. Com.* 199. *Co. Litt.* 266 a. 1 *Reeves' Hist.* 476. 4 *Kent's Com.* 373. See *Dreit Dreit*.

**DROITS OF ADMIRALTY.** Rights or perquisites of the admiralty. A term applied to goods found derelict at sea. 1 *Robinson's Adm. Rep.* 32. 2 *Kent's Com.* 357, note. Applied also to property captured in time of war by non-commissioned vessels of a belligerent nation. 1 *Kent's Com.* 96.

**DROITURAL.** [from *droit*, right.] In old English practice. Relating to right; or, more strictly, relating to the mere right

of property, as distinguished from the right of possession. An action *droitural* was an action brought to determine the right of property, as distinguished from an action *possessory*, in which the object was to ascertain the right of possession. 3 *Steph. Com.* 486. *Burton's Real Prop.* 123, pl. 377, note. *Roscoe's Real Act.* 2. This was the old distinction of writs relating to lands. *Gilb. C. Pleas*, 5. Writs of right proper were writs *droitural*. See *Possessory*.

**DROITURE.** L. Fr. [from *droit*, right.] Right; justice. *En primes voit le roy—que common droiture soit fait à tous*; in the first place the king wills that common right be done to all. *Stat. Westm.* 1, c. 1.

**DROITURELE, Droiturel, Droiturelle.** L. Fr. [from *droiture* or *droit*, right.] Rightful; lawful. *Britt.* c. 27.

**DROVA.** L. Lat. A drove, or driftway. A common road for driving cattle. *Cowell*.

**DROWN.** To merge or sink. "In some cases a right of freehold shall *drown* in a chattel." *Co. Litt.* 266 a, 321 a.

**DRU.** A thicket of wood in a valley. *Domesday*.

**DRUNGARIUS.** L. Lat. In old European law. The commander of a *drungus*, or band of soldiers. Applied also to a naval commander. *Spelman*.

**DRUNGUS.** L. Lat. In old European law. A band of soldiers, (*globus militum*.) *Spelman*.

**DRY EXCHANGE.** [L. Lat. *cambium siccum*.] In English law. A term formerly in use, said to have been invented for the purpose of disguising and covering usury; something being pretended to pass on both sides, whereas in truth, nothing passed but on one side, in which respect it was called *dry*. *Stat. 3 Hen. VII.* c. 5. *Cowell*. *Blount*. *Lud. Lopez. de Contr. et Negot.* cited *ibid.*

**DRY MULTURES.** In Scotch law. Quantities of corn paid to a mill, whether the payers grind or not. *Wharton's Lex.*

**DRY RENT.** [L. Lat. *redditus siccus*.] The same as *rent seck*. (q. v.) 2 *Bl. Com.* 42.

**Duas uxores eodem tempore habere non licet.** It is not lawful to have two wives

at the same time. *Inst.* 1. 10. 6. 1 *Bl. Com.* 436.

**DUB.** An abbreviation of *Dubitatur*, (q. v.) used in the reports.

**DUBITATUR.** L. Lat. It is doubted. Frequently used in the books, where a point is doubted.

**DUBLEE.** L. Fr. Doubled; repeated; duplicate. *Kelham*.

**DUCATUS.** L. Lat. [from *dux*, q. v.] A duchy. *Reg. Orig.* 153.  
A dukedom. *Spelman*, voc. *Dux*.

**DUCE, Douce.** L. Fr. [from Lat. *dulcis*.] Fresh. *Ewe douce*; fresh water. *Britt.* c. 1.

**DUCES TECUM.** L. Lat. (You bring with you.) In practice. A term applied to certain writs where a party summoned to appear in court is required to bring with him some piece of evidence, or other thing that the court would view. *Cowell. Termes de la ley.* See *Subpoena duces tecum*.

**DUCES TECUM LICET LANGUIDUS.** L. Lat. (Bring with you, although sick.) In practice. An ancient writ, now obsolete, directed to the sheriff, upon a return that he could not bring his prisoner, without danger of death, he being *adeo languidus*, (so sick); whereupon the court granted a *habeas corpus* in the nature of a *duces tecum licet languidus*. *Cowell. Blount*.

**DUCHY COURT OF LANCASTER.** A court of special jurisdiction in England, held before the chancellor of the duchy of Lancaster, or his deputy, concerning all matter of equity relating to lands holden of the king in right of the duchy of Lancaster. 3 *Bl. Com.* 78. 3 *Steph. Com.* 446. The proceedings in this court are the same as on the equity side in the courts of exchequer and chancery. *Id. ibid.*

**DUCISSA.** L. Lat. [from *dux*, q. v.] A duchess. *Towns. Pl.* 149.

**DUCKING STOOL.** See *Castigatory, Cucking Stool*.

**DUDZIME.** L. Fr. Twelve. *Kelham*.

**DUE.** [Lat. *debitum*, from *debere*, to owe.] That which one owes; that which one ought to pay, or do to, or for another.\*

Owed, or owing, as distinguished from payable. A debt is often said to be *due* from a person, where he is the party owing it, or primarily bound to pay, whether the time for payment has, or has not arrived. *Story, J., 6 Peters' Rep.* 29, 36. *Whar-ton's Lex.* See *Debitum*.

Payable. A bill or note is commonly said to be *due* when the time for payment of it has arrived. *Story, J., ub. sup.*

**DUELLUM.** Lat. [from *duo*, two.] In old English law. The judicial combat, or trial by battel. *Bract.* lib. 3, tr. 2, c. 21. fol. 141 b. *Spelman*. A single combat between two, to prove the truth in a suit; the one who overcame being considered as having proved his case. (*Est singularis pugna inter duos, ad probandum veritatem litis, et qui vicerit probasse intelligitur.*) *Fleta*, lib. 1, c. 32. *Duellum* is the appropriate Latin word, sometimes expressed by *monomachia* (single fight.) *Co. Litt.* 294 b. 4 *Inst.* 157. *Battail, bataille*, or *battayle*, was the Norman French. *Vadiare duellum*; to wage the duel, to give pledges to fight. *Bract.* fol. 141 b. *Per-cussio duelli*; the striking of a duel, the commencement of the combat. *Id. ibid.* See *Battel, Combat, Camp fight*.

**DUIST, Duit.** L. Fr. Ought. *Kelham. Britt.* c. 22.

**DUKE.** [Lat. *dux*, from *ducere*, to lead.] The first title of dignity in Great Britain, after the royal family. 1 *Bl. Com.* 397. 3 *Steph. Com.* 1, 2. *Camden Brit.* tit. *Ordines*. Derived from the Latin *dux*, the leader of an army, which *duke* itself originally signified. *Crabb's Hist.* 236. See *Dux*.

**DULY.** In due or proper form, or manner.

Regularly; upon a proper foundation, as distinguished from mere form. See 15 *Mees. & W.* 465, 469.

**DUM.** Lat. While. A word of limitation in old conveyances. *Co. Litt.* 235 a. 10 *Co.* 41 b.

**DUM BENE SE GESSERIT.** L. Lat. While he conducted himself well; during good behaviour. 2 *Bl. Com.* 252. The implied condition on which a feud or fee was originally given. *Id.* See *Quamdiu bene se gesserint*.

**DUM FERVET OPUS.** Lat. While

the work glows; in the heat of action. 1  
*Kent's Com.* 120.

**DUM FUT INFRA ÆTATEM.** L. Lat. (While he was within age.) In old English practice. A writ of entry which formerly lay for an infant after he had attained his full age, to recover lands which he had aliened in fee, in tail, or for life, during his infancy; and after his death, his heir had the same remedy. *Reg. Orig.* 228 b. *F. N. B.* 192 G. *Litt.* sect. 406. *Co. Litt.* 247 b. *Roscoe's Real Act.* 93. Long superseded by the action of ejectment, and finally abolished in England, by statute 3 & 4 Will. IV. c. 27.

**DUM FUT IN PRISONA.** L. Lat. (While he was in prison). In old English practice. A writ of entry which lay to restore a man to the possession of lands which he had aliened under duress of imprisonment. *Roscoe's Real Act.* 93. 2 *Inst.* 482. Abolished with the preceding writ.

**DUM FUT NON COMPOS MENTIS.** L. Lat. (While he was of unsound mind). In old English practice. A writ of entry which lay for a man who had aliened his lands while he was of unsound mind, to recover them from the alienee. *Reg. Orig.* 228 b. *F. N. B.* 202, C. 2 *Bl. Com.* 291. 3 *Reeves' Hist.* 31. *Termes de la ley.* *Roscoe's Real Act.* 93. Abolished with the preceding writ.

**DUM RECENS FUT MALEFICIUM (FACTUM).** Lat. While the offence was fresh. A term employed in the old law of appeal of rape. *Bract.* fol. 147.

**DUM SOLA.** Lat. While sole, or single. *Dum sola fuerit*; while she shall remain sole. *Dum sola et casta vixerit*; while she lives single and chaste. Words of limitation in old conveyances. *Co. Litt.* 235 a.

**DUMMODO.** Lat. Provided that; so that. A word of limitation in old conveying. 10 *Co.* 41 b. *Co. Litt.* 235 a. One of the apt words of reserving a rent. *Co. Litt.* 47 a. *Dummodo solverit talem redditum*; provided he shall pay such a rent. *Id.* 235 a.

**DUN.** Sax. [L. Lat. *duna, dunum.*] A hill of small elevation; a low hill. *Domesday.* *Co. Litt.* 4 b. Places in England, the names of which end in *dun*, or *don*, (Lat. *dunum*.) are supposed to have been

so called from their elevated situation. *Id.* *Cowell.* *Spelman*, voc. *Dunum*. Hence banks, or elevations along the sea shore are called *downs*.

**DUNA.** L. Lat. A bank of earth cast up; the side of a ditch. *Cowell*.

**DUNUM.** L. Lat. A hill or rising ground. *Spelman*. See *Dun*.

**Due non possunt in solide unam rem possidere.** Two cannot possess one thing in entirety. *Co. Litt.* 368.

**Due sunt instrumenta ad omnes res aut confirmandas aut impugnandas, ratio et autoritas.** There are two instruments for confirming or impugning all things,—reason and authority. 8 *Co.* 16. *The Prince's case*.

**DUODECIMA MANUS.** L. Lat. [L. Fr. *dozyme meyn*.] The twelfth hand; twelve hands, or twelve-hand. The oath of twelve men, (including the party himself, though Britton makes it to be exclusive,) by whom a defendant was formerly allowed to make his law. *Glanv.* lib. 1, c. 9. *Bract.* fol. 410. *Britt.* c. 27. 3 *Bl. Com.* 343. *Il covint aver oue luy xi maynz de jurer oue luy*, &c.; it behooves to have with him eleven hands to swear with him, &c. *Diversite des Courts*, fol. 305. Called *hands*, because the hand was always used in making oath, and generally by laying it on the gospels. See *Manus*, *Hund*, *Compurgator*, *Wager of law*.

**DUODECEMVirALE JUDICIUM.** L. Lat. The trial by twelve men, or by jury. Applied to juries *de medietate linguæ*. *Molloy de Jur. Mar.* 448.

**DUODENA.** L. Lat. A jury of twelve men. *Cowell*.

A dozen. *Duodena panis*; a dozen of bread. *Towns. Pl.* 170. *De tribus duodenis fili*; of three dozen of thread. *Id.* 104.

**DUPLEX QUERELA.** L. Lat. (A double complaint, or double quarrel.) In English ecclesiastical law. A complaint in the nature of an appeal, made by a clerk, or other person, to the archbishop of the province, against an inferior ordinary, for delaying or refusing to do justice in some ecclesiastical cause; as to give sentence, institute a clerk, &c. *Cowell.* *Blount.* *Tomlins.* 3 *Bl. Com.* 247. So called because most commonly made against both

the judge, and him at whose suit justice is denied or delayed. *Cowell*.

**DUPLEX VALOR MARITAGII.** L. Lat. Double the value of the marriage. 2 *Bl. Com.* 70. *Litt. sect.* 110. *Co. Litt.* 82 b. See *Maritagium*.

**DUPLICATE.** [Lat. *duplicatum*, from *duplicare*, to double.] That which is doubled, or twice made; an original instrument repeated.\* A document which is the same as another in all essential particulars. *Tindal, C. J., 7 Man. & Gr.* 93. *Maule, J., Id.* 94. Sometimes defined to be the copy of a thing; but, though generally a copy, a duplicate differs from a mere copy, in having all the validity of an original. Nor, it seems, need it be an exact copy. See *supra*. Defined also to be the counter part, of an instrument; but in indentures there is a distinction between counter parts executed by the several parties respectively, each party affixing his or her seal to only one counterpart, and duplicate originals, each executed by all the parties. 7 *Man. & Gr.* 91, note. See 2 *Id.* 518, note. And see *Counterpart*. The old indentures, charters or chirographs, seems to have had the character of duplicates. See *Duplicare*.

**DUPPLICARE.** Lat. To double or repeat; to make twice or in two parts, as the old charters were executed.\* *Si [chartæ] communes sint, duplicari debent, quod quilibet habeat partem suam*; if the charters be common [i. e. involving mutual covenants] they ought to be executed in two, so that each party may have his part. *Bract. fol.* 33 b. *Conventio duplicata*; a duplicate covenant or agreement. *Id. fol.* 169.

**DUPPLICATIO.** Lat. [from *duplicare*, to double, or follow as the second in order.] In the civil law. The defendant's answer to the plaintiff's replication; corresponding to the rejoinder of the common law. *Inst.* 4. 14. 1. *Heinecc. El. Jur. Civ. lib.* 4, tit. 14, § 1284. The fourth pleading in the series. 3 *Bl. Com.* 310. Translated *duplication*. *Hallifax Anal.* b. 3, c. 5, num. 7. *Bracton* calls this pleading *triplicatio*. *Bract. fol.* 400 b, 428 b, 57 b.

**DUPPLICATIO.** Lat. A doubling. *Duplicacionem possibilitatis lex non patitur*. The law does not allow the doubling of a possibility. 1 *Roll. R.* 321.

**DUPPLICATUM JUS.** L. Lat. Double right. *Bract. fol.* 283 b. See *Droit droit*.

**DUPLICITY.** In pleading. That fault which consists in employing two or more distinct allegations or answers, where one is sufficient.\* *Steph. Plead.* 251, 252. See *Double Plea*.

**DUPLUM.** Lat. Double. *Damna in duplo*; double damages. *Stat. Westm.* 2, c. 26.

**DUPONDIUS.** Lat. Two pounds; the double of an *as*; twenty-four *uncia*. *Calvin's Lex. Jurid. Inst.* 2. 14. 8. *Heinecc. El. Jur. Civ. lib.* 2, tit. 14, § 541.

**DURANTE.** L. Lat. During. A word of limitation in old conveyances. *Co. Litt.* 234 b. *Durante viduitate*; during widowhood. *Id. ibid.* *Durante virginitate*; during virginity. *Id. ibid.* *Durante vita*; during life. *Id. ibid.*

**DURANTE ABSENTIA.** L. Lat. During absence. 2 *Bl. Com.* 503. See *Administration*.

**DURANTE BENEPLACITO.** L. Lat. During good pleasure. The tenure by which the judges in the superior courts in England formerly held their commissions. 1 *Bl. Com.* 267, 342. 2 *Steph. Com.* 492.

**DURANTE MINORE ÆTATE.** L. Lat. During minority. 2 *Bl. Com.* 503. 5 *Co.* 29, 30. See *Administration*. Words taken from the old form of letters of administration. 5 *Co. ub. sup.*

**DURANTE VIDUITATE.** L. Lat. During widowhood. 2 *Bl. Com.* 124. See *Durante*.

**DURESS.** [L. Fr. *duress*; Lat. *durities, duritia*.] Constraint, compulsion. The state of compulsion or necessity in which a person is induced, by the restraint of his liberty, or menace of bodily harm, to execute a deed, or do any other legal act, or to commit a misdemeanour; and which constraint may afterwards be taken advantage of, to avoid such act, or its consequences. 1 *Bl. Com.* 130. 2 *Id.* 292. 4 *Id.* 30. 1 *Steph. Com.* 130, 442. 2 *Kent's Com.* 453. *Termes de la ley*.

**DURESS OF IMPRISONMENT.** The wrongful imprisonment of a person, or the illegal restraint of his liberty, in order to compel him to do some act. 1 *Bl. Com.* 130, 131, 136, 137. 1 *Steph. Com.* 137. 2 *Kent's Com.* 453.

**DURESS PER MINAS.** L. Lat. Duress by threats. The use of threats and menaces to compel a person, by the fear of death, or grievous bodily harm, as mayhem or loss of limb, to do some lawful act, or to commit a misdemeanour. 1 *Bl. Com.* 130. 4 *Id.* 30. 4 *Steph. Com.* 83. See *Metus*.

To **DURESS.** To subject to duress. A word used by Lord Bacon. "If the party *duressed* do make any motion," &c. *Bacon's Max.* 89, reg. 22.

**DURESSOR.** One who subjects another to duress; one who compels another to do a thing, as by menace. A word used by Lord Bacon. *Bac. Max.* 90, reg. 22.

**DURSLEGI, Dursley.** [from Germ. *durre*, dry, and Sax. *slege*, a stroke.] In old European law. Blows without wounding or bloodshed; dry blows or beating. *Spelman*.

**DUSCENS.** L. Fr. Two hundred. *Kelham*.

**DUSESME, Duzim.** L. Fr. Twelfth. *Kelham*.

**DUSKES A CHOU QE.** L. Fr. Until that. *Kelham*.

**DUTIES**, in a large sense, is a word very nearly equivalent to *taxes*, embracing all impositions or charges levied on persons or things. *Story on the Const.* (Abr.) § 474.

In its more restrained sense it is often used as equivalent to *customs*, and in this sense is nearly synonymous with *imposts*. *Id. ibid.*

**DUUMVIRI.** Lat. [from *duo*, two, and *vir*, men.] A general appellation among the ancient Romans, given to any magistrates elected in pairs to fill any office, or perform any function.\* *Brande*.

*Duumviri municipales* were two annual magistrates in the towns and colonies, having judicial powers. *Calvin's Lex. Jurid.*

*Duumviri navales* were officers appointed to man, equip and refit the navy. *Id. ibid.*

**DUX.** Lat. [from *ducere*, to lead.] A leader or military commander.

In feudal and old European law. Duke; a title of honor, or order of nobility. 1 *Bl. Com.* 397. *Crabb's Hist.* 236. The origin and history of this title are elaborately treated by *Spelman*, who observes that it was originally an official title, afterwards honorary, and finally feudal and hereditary.

*Dux* is used in Bracton as descriptive of the first order of subjects in the kingdom. *Sub eis [regibus]* duces, comites, barones, &c.; under them, dukes, earls, barons, &c. *Bract. fol.* 5 b.

**DUZ, Dus, Dug.** L. Fr. A leader. *Kelham*.

**DUZE, Dusze.** L. Fr. Twelve. *Kelham*.

**DWELLING HOUSE.** [L. Lat. *domus mansionalis*.] In conveyancing, includes all buildings attached to, or connected with the house. 2 *Hilliard's Real Prop.* 338, and note.

In the law of burglary. A house in which the occupier and his family usually reside, or, in other words, dwell and lie in. *Wharton's Am. Crim. Law*, 357. Otherwise called a mansion house. 3 *Serg. & R.* 199. A building or out-house standing near enough to the dwelling house to be used with it, as appurtenant to it, or standing in the same yard, whether the yard be enclosed or open, is part of the dwelling house, so that burglary may be committed within it. 1 *Devereux* (N. C.) *R.* 253. 1 *Hayward*, 242, 102. See 2 *N. Y. Rev. St.* [669], 557, §§ 16, 17. See *Burglary*.

**DY.** L. Fr. Due, just. *Kelham*.

**DYENT.** L. Fr. They say. *Kelham*.

**DYING DECLARATIONS.** In the law of evidence. Declarations made in extremity, (in *extremis*), when the party is at the point of death, and when every hope of this world is gone; when every motive to falsehood is silenced, and the mind is induced by the most powerful considerations to speak the truth. Lord C. B. Eyre, 2 *Leach's Cr. C.* 563, case 218. These are admissible as evidence only in cases of homicide, where the death of the deceased is the subject of the charge, and the circumstances of the death are the subject of the dying declarations. 1 *Greenl. on Evid.* § 156.

**DYVOUR.** In Scotch law. A bankrupt. 1 *Forbes' Inst.* part 2, b. 3, ch. 1, tit. 10.

## E.

**E**, at the commencement of words having the first syllable *En* or *Em*, properly denotes a derivation from the French, as I

denotes a derivation from the Latin. Thus, *Enclose*, *Encumber*, *Endow*, *Enfranchise*, *Engross*, *Enjoin*, *Enlarge* and *Enroll* are closely formed from the L. Fr. *Enclorer*, *Encombrer*, *Endower*, *Enfranchir*, *Engrosser*, *Enjoindre*, *Enlarger* and *Enrouler*, (qq. v.) On the other hand, *Indict*, *Inform*, *Infringe*, *Inquire* follow the L. Lat. *Indictare*, *Informare*, *Infringere* and *Inquirere*, (qq. v.) There seems however to have been a tendency, from an early period, to the use of I, rather than E, even in words wholly and properly of French origin; as in *Imparl*, *Implead* (qq. v.) and *Imprison*, which being derived from the pure L. Fr. *Emparler*, *Empleder* and *Emprisonner*, should properly have been spelled with an E. This may have arisen from the sound of the initial letter, the E being constantly pronounced I, as it is at present. Hence we meet, in the old books, with *Ingross*, *Injoin*, *Inrol* and *Imbezzle*, which are no longer used. To a similar preference of the Latin to the French in the sound of the first syllable may perhaps be attributed in a great degree, the gradual tendency in modern orthography to the use of I rather than E, as an initial letter. In a few cases however, both forms are still employed. Thus, *Endorse* and *Indorse* (qq. v.) continue to have their respective advocates, although the latter enjoys the support of standard authority.

E, in the Latin of the civil law, frequently occurs in the place of i; as in the words *intelligere*, *negligere*, *deminuere*; for *intelligere*, *negligere*, *dsminuere*. So in the end of words, *defensione*, *exceptione* and others are constantly used for *defensionis* *exceptionis*, &c. *Calv. Lex. Jurid.*

E in the old books is constantly used for the diphthong æ, as in *ceterum*, *hereditas*, and other words. *Bract. passim.*

E. L. Fr. A contraction of *et*, (and.) *Arsions e homicides. Artic. sup. Chart. c. 17.*

E. Lat. From; out of. See *Ex*.

*Ea est accipienda interpretatio, quæ vitæ caret.* That interpretation is to be received [or adopted] which is free from fault [or wrong.] The law will not intend a wrong. *Bacon's Max. 17, (in reg. 3.)*

EA INTENTIONE. L. Lat. With that intent. Held not to make a condition but a confidence and trust. *Dyer, 138 b.*

EAGE. L. Fr. Age. *Kelham.*

EALDER. Sax. [Lat. *senior*.] In Saxon law. Elder. A term generally used to express age, and sometimes office, though the latter was usually denoted by *ealdorman* (q. v.) *Spelman, voc. Aldermanus.*

EALDERMAN, *Ealdorman*. Sax. [L. Lat. *aldermannus*; Lat. *senior*.] Elder man, or elder. A very ancient title, applied among the Saxons to a great variety of officers, (see *Aldermannus*;) the term being indicative not so much of age, as of experience and fitness for public station. *L.L. Edu. Conf. c. 35. Spelman, voc. Aldermannus.* Used, in particular, as the title of a high officer having the government of a county, or shire, otherwise called *shireman*, and by some writers thought to be the same with the *eorle*, or *earl* of later times. *Co. Litt. 168 a. 1 Reeves' Hist. E. Law, 6. Gilb. C. Pleas, Introd. p. 3, note. Id. 57. 1 Bl. Com. 116, 398. 3 Id. 36. 3 Steph. Com. 3. Crabb's Hist. 24.* He had judicial powers and presided with the bishop in the *shiremote*, (Sax. *scyre gemote*), or county court; and *Spelman* is of opinion that he was properly the chief judicial officer or judge of the county, (*prætores seu justitiarum comitatûs*), answering to the *sagibaro* of the Salian law; and that he was a different officer from the *earl* or *comes*, (who properly was the governor of the county,) occupying a middle rank between him and the vice-comes, or earl's deputy. *Spelman, voc. Aldermannus, Aldermannus Comitatus.* A law of *Athelstan*, cited by *Spelman*, (voc. *Eorla*), in which *eorles*, and *ealdormannes* are both mentioned, strongly confirms this idea; but the ancient authorities are not uniformly clear on this point. The word *ealdorman* is sometimes erroneously written (with an *r*), *earlderman*, the first syllable of which may have led to the idea that it denoted the same officer as *earl*. See *Earl*.

EARL. [Sax. *eorl*, *eorle*; L. Lat. *comes*, *eorla*; Fr. *comte*; L. Fr. *countee*.] The most ancient title of nobility in England, and formerly the highest, (answering to the Lat. *comes*;) but now the third, ranking between a marquess and a viscount. *1 Bl. Com. 398. 3 Steph. Com. 3.*

*Earl* is said to be a Danish word, (sometimes written *jarl*, and derived from *ear*, or *ar*, honor,) which was introduced into England by the Danes at the time of their invasion. As it had nearly the same signification with the Saxon *ealdorman*, it was adopted by the Saxons as the name of that officer, and was afterwards applied to the



*comes* or count of the Normans. *Spelman*, vocc. *Eorla, Aldermannus*. *Camden Brit. tit. Ordines*. The terms *count*, and *countee*, continued to be used by the Normans, for some time after the Conquest, as the titles of the governor or chief officer of a county, but were finally supplanted by the English *earl*; although *count* has left its traces in the words *county*, an earl's territory; *countess*, an earl's wife; and *viscount*, an earl's deputy; the two latter being also subsisting titles of nobility. See *Count, Viscount*.

After the office of earl or *comes* was made hereditary by William the Conqueror, the title became the highest dignity in the kingdom. At first it was territorial, being annexed either to the office itself, or to the possession of certain lands held of the crown. When the earl relinquished the government of the county, the title continued to be one of territorial dignity as annexed to the lands he held; but it gradually lost this character also, and finally became what it now is, a mere personal dignity annexed to the family of the possessor and independent of land. *Home's* (Lord Kames) *Brit. Antig. Essay III. Crabb's Hist.* 235, chap. xvi. *Cruise Dig. tit. Dignities*. 1 *Ld. Raym.* 10, 13. It now merely confers nobility and an hereditary seat in the house of Lords. *Wharton's Lex.*

**EARLDOM.** [L. Lat. *comitatus*.] The office, jurisdiction, or dignity of an earl, (*comes*). An earldom originally consisted in dignity, office, and the possession of lands. 1 *Ld. Raym.* 10, 13. It is now a mere personal dignity, without office annexed, and independent of any land. See *Earl, Comitatus*.

**EARL MARSHAL.** [L. Lat. *comes mariscallus*.] A great officer of state in England, who anciently presided in the court of chivalry, or court of honor. 3 *Bl. Com.* 68. 4 *Id.* 267. Since the disuse of that court, the office, which still exists, has been confined to the adjusting armorial ensigns, determining the rights of place and precedence, marshalling and conducting coronations, marriages and funerals of the royal family, and proclaiming war and peace. *Crabb's Hist.* 553, chap. xxxiii.

**EARNEST.** [Lat. *arraha, arra, arræ*.] A part of the price of goods sold, or a portion of the goods themselves, delivered by one of the parties to a contract of sale to the other, in order to bind the contract.\* A token or pledge passing between the parties, by way of evidence, or ratification of the sale. 2 *Kent's Com.* 495, note (a). 2 *Bl.*

*Com.* 447, 448. 2 *Steph. Com.* 121, and note. See *Arrha, Denarius Dei*.

Earnest was in use in the early ages of the English law, as a means of binding the parties, and completing the sale, but has fallen into very general disuse in modern times. 2 *Kent's Com.* 495, note. It is however still given in some parts of England on hiring farm and household servants at the "statutes" or meetings for that purpose; the money paid being otherwise called the *fastening penny*, though now a shilling. *Howitt's Rural Life of England*, 416. (Phil. ed. 1841.)

**EASEMENT.** [L. Lat. *aisiamentum, aysiamentum*, from Fr. *aisé*, a convenience.] A liberty, privilege or advantage in land, without profit, existing distinct from an ownership of the soil. *Prentiss, C. J.*, 3 *Vermont R.* 279. 1 *Crabb's Real Prop.* 125, § 115. The right to use a public highway is a public easement. *Swift, J.*, 1 *Connecticut R.* 103, 132. 2 *Smith's Leading Cas.* 98. (Am. ed. note.)

A private easement is a privilege, service, or convenience, which one neighbor has of another, by prescription, grant or necessary implication, and without profit; as a way over his land, a gateway, water course, and the like. *Kitch.* 105. 3 *Cruise Dig.* 484. Otherwise defined as "a right of accommodation in another's land;" "a right which one man has to use the land of another for a special purpose." *Burton's Real Prop.* 361. pl. 1165. 3 *Kent's Com.* 434. A species of what the civil law terms servitudes (*servitudines*). *Inst.* 2. 3. *Glanv.* lib. 12, c. 14. *Bract.* fol. 220 b, lib. 4, tr. 1, c. 37. See *Aisiamentum, Servitude*. See *Gale & Whitley on Easements*, per tot.

**EASTER TERM.** [L. Lat. *terminus Paschæ*.] In English practice. One of the four terms of the superior courts in England, formerly called a moveable term, but now fixed, beginning on the 15th April, and ending on the 8th of May in every year. *Stat.* 11 Geo. IV. 1 *Will.* IV. c. 70. 3 *Chitt. Gen. Pr.* 91.

**EAT INDE SINE DIE.** L. Lat. (*Quod eat, &c.*; that he go thereof without day.) In practice. Words anciently used in recording a judgment rendered for a defendant, as the corresponding English words still are; signifying that he is dismissed or permitted to go out of court without any further day, or adjournment; the action being at an end. 3 *Bl. Com.* 316, 399. 3 *Steph. Com.* 636. Held to be of the same effect with *sit inde quietus*. *Cro.*

*Jac.* 211. See *Adjournment, Continuance, Day, Dies.*

EAUE, *Eawe, Awe, Ewe.* L. Fr. Water. *Kelham.* See *Ewe.*

EAUX. L. Fr. They; them. *Eaux meismes*; themselves. *Kelham.*

EAVES DROPPING. In English criminal law. The offence of listening under walls or windows, or the eaves of a house, to hearken after discourse, and thereupon to frame slanderous and mischievous tales. 4 *Bl. Com.* 168. It is a misdemeanour at common law, indictable at sessions, and punishable by fine and finding sureties for good behaviour. *Ibid.* *Steph. Crim. Law*, 109. *Lewis' U. S. Crim. Law*, 233.

EBBA. L. Lat. Ebb. *Ebba et fluitus*; ebb and flow of tide; ebb and flood. *Bract.* fol. 255, 338. The time occupied by one ebb and flood, was anciently granted to persons essoigned as being beyond sea, in addition to the period of forty days. *Id. ibid.*

EBEREMORD, *Eberemorth.* Sax. [from *abere*, manifest, and *mord*, killing.] Open killing or murder, as distinguished from manslaughter. *LL. Hen.* 1. c. 13. Called *open*, not because openly perpetrated, but because the fact of its perpetration was open or manifest to all. *Spelman.* See *Abere-murder.*

ECCE modo mirum! quod femina fert breve regis, Non nominando virum conjunctum robore legis.

Behold, now, a wonder! that a woman bears, [or has] the king's writ, not naming her husband, though united to her by the strong bond of the law. An exclamation in the form of a rhyming Latin couplet, expressive of surprise that a married woman could, in any case sue without her husband. Quoted by Lord Coke, and said to have been occasioned by the case of *Belknap v. Lady Weyland.* 2 *Hen. IV.* 7. *Co. Litt.* 132 b, 133 a. 2 *Kent's Com.* 154.

ECCLESIA. Lat. [from Gr. ἐκκλησία, from ἐκκαλεῖν, to call out; L. Fr. *esglise.*] In English law. A church; a place of religious worship, (*templum, seu domus qua fideles conveniunt, ritus divinos celebraturi.*) *Spelman.* Called by Lord Coke "the dwelling house of Almighty God;" (*ecclesia est domus mansionalis Omnipotentis Dei.*) 2 *Inst.* 164. See *Church.*

A parsonage. *F. N. B.* 32 H. That is, the living or benefice. *Bract.* fol. 52.

Bracton says the common people in his time used *ecclesia*, which properly denoted the material building (*ex lignis et lapidibus*.) in the sense of advowson or right of presentation, and that it was so construed *propter eorum simplicitatem.* *Id. ibid. Id.* fol. 95.

Εκκλησία was used among the ancient Greeks, as *curia* and *senatus* among the Romans, to denote a public assembly (*pro cætu et congregatione*.) as well as the place of meeting itself (*pro loco in quem convenitur.*) *Spelman.* See *Calvin's Lex. Jur.*

*Ecclesia non moritur.* The church does not die. 2 *Inst.* 3.

*Ecclesia magis favendum est quam personæ.* The church is more to be favored than the parson. *God. Rep.* 172.

ECCLESIASTICAL. Belonging to, or connected with the church. *Tomlins.*

ECCLESIASTICAL CORPORATIONS. In English law. Corporations whose members are entirely spiritual persons, and incorporated as such; as bishops, certain deans and prebendaries, archdeacons, parsons and vicars, which are sole corporations; and deans and chapters which are bodies aggregate. 1 *Bl. Com.* 470. 3 *Steph. Com.* 169. What are called in the United States religious corporations, belong to this division. 2 *Kent's Com.* 274.

ECCLESIASTICAL COURTS. [L. Lat. *curiæ christianitatis.*] Courts held in England by the king's authority, as supreme head of the church, for the consideration of matters chiefly relating to religion. *Jacob. Tomlins.* 4 *Inst.* 321. They are the archdeacon's court, the consistory court, the court of arches, the court of peculiars, the prerogative court, and the privy council, which is the great court of appeal. 2 *Chitt. Gen. Pr.* 494. *Wharton's Lex.* See *Archdeacon's court*, and the other titles.

ECCLESIASTICAL LAW. That species of law which is administered by the ecclesiastical courts. The ecclesiastical law of England is compounded of these four main ingredients; the civil law, the canon law, the common law, and the statute law. *Burn's Eccl. Law*, pref. See 5 *Co. Caudey's case.*

E CONVERSO. Lat. 'Conversely.

ECDICUS, pl. ECDICI. [from Gr. ἐκδικος, from ἐκ, and δίκη, justice.] The attorney, proctor, or advocate of a corporation. *Episcoporum ecdici*; bishops' proctors; church lawyers. 1 *Reeves' Hist.* 65.

**EDERE.** Lat. To give out; to put forth; to publish; to declare. *Calv. Lex. Jurid.* See various applications of the word, *Id. ibid.*

**EDICTUM.** Lat. [from *edicere*, to publish or declare.] In the Roman law. A mandate, ordinance, or proclamation. An ordinance, or law, enacted by the emperor without the senate; belonging to the class of *constitutiones principis*. *Inst.* 1. 2. 6. *Cooper's Notes, in loc.*

A general order published by the prætor on entering upon his office, containing the system of rules by which he would administer justice during the year of his office. *Dig.* 1. 2. 2. 10. 1 *Mackeld. Civ. Law*, 21, 29, §§ 31, 40. See *Calv. Lex. Jur.*

**EDITUS, Aeditus.** L. Lat. [from *edere*, to put forth, or publish.] Put forth, published or promulgated; passed as a law. *Reg. Jud.* 22. *Contra formam statuti*—editi et provisi; against the form of the statute—made and provided. *Rast. Entr.* 598, 599.

Brought forth or born, as a child. *Bract.* fol. 278.

**EE.** A termination giving to the words in which it occurs a passive sense, denoting the party to whom an act is done, or on whom a right is conferred; the receiving party; as—"or" denotes the acting party. Thus *feoffee* (*feoffatus*) denotes the party to whom a feoffment is made; *donee* (*donatorius*), the party who receives a gift in tail; *lessee*, (*firmarius*), the party to whom a lease is made, &c. 2 *Bl. Com.* 140, note (a). *Litt.* sect. 57. These words have long been in use, and many others have, in modern times, been constructed on the same principle, as *obligee*, *vendee*, *drawee*, and even *promisee*. *Ee* corresponds, in many cases, with the Latin termination—*atus*, and the French—*é*.

**E'E.** L. Fr. A common contraction of *estre*, to be, or *este*, been. *Ceux q' av'o't e'e somo's*; those who shall have been summoned. *Britt.* c. 1. *E'e faites*; to be done. *Id.* c. 27.

**EES.** L. Fr. Bees. *Britt.* c. 33.

**EFFECTS.** Personal estate or property. This word has been held to be more comprehensive than the word *goods*, as including fixtures, which "goods" will not include. 7 *Tuunt.* 188. 4 *J. B. Moore*, 73. 4 *B. & A.* 206. 2 *Chitt. Bl. Com.* 384, note.

In wills the word *effects* is equivalent to property, or worldly substance, and if used *simpliciter*, as in a gift of "all my effects," will carry the whole personal estate. 15 *Vesey, Jr.* 507. *Ward on Legacies*, 209. The addition of the words "real and personal," will extend it so as to embrace the whole of the testator's real and personal estate. *Cowp.* 299. 3 *Bro. P. C.* 388. The word "effects," however, without the word "real" will not, *proprio vigore*, comprehend land, though followed by the words "of what nature, kind or quality soever." 2 *Powell on Dev.* (by Jarman,) 167. 2 *M. & S.* 448. 15 *Mees. & W.* 450. See 13 *Vesey, Jr.* 39.

**EFFORCER.** L. Fr. To aid or assist. *Kelham.*

**EFFORCIALITER.** L. Lat. Forcibly.

**EFFRACTORES.** Lat. [from *effringere*, to break open or out.] In civil and old European law. Burglars; house-breakers; those who break into houses to steal; (*qui furandi causâ domos effringunt*.) *Spelman.* *Cowell.* *Effractor*; a burglar. *Bract.* fol. 105. *Calv. Lex. Jur.*

Prison breakers; those who break out of prison; (*qui se è carcere proripiunt*.) *Spelman.*

**EFFUSIO SANGUINIS.** Lat. In old English law. The shedding of blood; (*Sax. bloodwit*.) The mulct, fine, *wite*, or penalty imposed for the shedding of blood, which the king granted to many lords of manors. *Cowell.* *Tomlins.* See *Bloodwit*.

**EGALTIE.** L. Fr. Equality. *Litt.* sect. 253.

**EGREDIENS ET EXEUNS.** L. Lat. Going forth and issuing out of (land). *Towns.* Pl. 17.

**EGRESSUS.** Lat. [from *egredi*, to go forth.] A going forth; egress. *Stat. Mert.* c. 4. See *Accessus*, *Ingressus*.

**Ei incumbit probatio qui dicit, non qui negat.** The proof lies upon him who affirms, not upon him who denies. *Dig.* 22. 3. 2. This maxim of the civil law is adopted in the common law of evidence. 3 *Bl. Com.* 566. *Best on Evid.* 295, § 254. 1 *Greenl. on Ev.* § 74.

**Ei nihil turpe, cui nihil satis.** To him to whom nothing is enough, nothing is base. 4 *Inst.* 53.

**EIA.** L. Lat. [from Sax. *eage*, by changing *g* into *i* or *y*.] An island, or *ey*, (Lat. *insula*.) So called, according to Spelman, from a supposed resemblance to the shape of an eye, or egg; the proper meanings of the Sax. *eage*. See *Ey*.

**EIENT, Eyent.** L. Fr. (They) have; (they) shall have. *Stat. Westm.* 1, c. 15. *Artic. sup. Chart.* c. 2.

**EIGNE, Eisne, Aisme.** L. Fr. The eldest, or first born. *Litt. sect.* 399. See *Bastard eigne*.

**EIGNESSE.** L. Fr. [from *eigne*, elder; L. Lat. *einacia, ainetia*.] In old English law. Eldership. The privilege of an eldest sister of choosing first on a partition of lands held in coparcenary. *Britt.* c. 72. 6 *M. & Gr.* 327, note.

**EIK.** In Scotch law. An addition. *Bell's Dict. Tomlins.* 1 *Forbes' Inst.* part 3, b. 1, ch. 1, tit. 2, sect. 1.

**EINECIA, Esnecia.** L. Lat. [L. Fr. *eignessee*.] In old English law. Eldership; the right or privilege of the first born. *Cowell.* See *Eignessee, Ainecia*.

**EINETIUS, Enetius, Enitius, Eneyus, Aesnecius.** L. Lat. [from *eigne*, or *aisne*.] The eldest or first born; (Lat. *primogenitus*.) *Pars einetia*; the part or share of the eldest sister. *Spelman.*

**EINS, Eyns.** L. Fr. In. One who is in actual possession, is emphatically said to be in. See *In. Tenant a volunt, que est eins per lease de son lessor*; tenant at will who is in by lease of his lessor. *Litt. sect.* 82. *Eins encounter la ley*; in against the law. *Id. sect.* 306. *Eins per descent.* *Id. sect.* 403. *Eins per divers titles.* *Id. sect.* 662. *La ley luy adjudgera eins*; the law will adjudge him in. *Id. sect.* 659, 660.

In; into. *A mettre eins les bestes*; to put in the beasts. *Britt.* c. 54.

**EINS CEO QUE.** L. Fr. In this that; inasmuch as. *Britt.* c. 54. *Eins ceo* is translated by Kelham, when, unless, the same, rather, until.

**EIRE, Eyre, Eier, Eyer.** L. Fr. [from Lat. *iter*, by dropping the *t*.] In old English law. A journey anciently made by the justices, called justices in eyre, or justices itinerant, (*justitiani in itinere*, or *itinerantes*;) from one place to another, to ad-

minister justice. *Spelman. Co. Litt.* 293 b. Answering nearly to the modern circuit.

The court of the justices in eyre. *Co. Litt.* 293 a. See *Eyre, Iter*.

**EISNE, Aisme.** L. Fr. The eldest. *Co. Litt.* 166 b.

**EISNETIA, Einetia.** L. Lat. The part or share of the eldest. *Co. Litt.* 166 b. See *Einecia, Einetius*.

**EISSI.** L. Fr. As. *Kelham.*

**EISSIR.** L. Fr. To go out of; to issue. *Kelham.*

**EIT.** L. Fr. Has. *Le lessee eit possession*; the lessee has possession. *Litt. sect.* 460.

**EJECT.** [from Lat. *ejicere*, to throw out.] To cast, or throw out; to oust, or dispossess; to put or turn out of possession. 3 *Bl. Com.* 198, 199, 200.

**EJECTION.** [L. Lat. *ejectio*, from *ejicere*, q. v.] A turning out of possession. 3 *Bl. Com.* 199.

**EJECTIONE CUSTODIÆ.** L. Lat. [L. Fr. *ejectment de garde*.] In old practice. Ejectment of ward. A writ which anciently lay against him who turned out a guardian from any land during the minority of the heir. *Reg. Orig.* 162. *F. N. B.* 139, L. *Litt. sect.* 323. First mentioned in the statute of Westminster 2. 2 *Reeves' Hist.* 208, 325.

**EJECTIONE FIRMÆ.** L. Lat. [L. Fr. *ejectment de firme*.] Ejection, or ejectment of farm. The name of a writ or action of trespass, which lay at common law where lands or tenements were let for a term of years, and afterwards the lessor, reversioner, remainder-man, or any stranger, ejected or ousted the lessee of his term, *ferme*, or *farm*, (*ipsum a firma ejecit*.) In this case the latter might have his writ of *ejection*, by which he recovered at first damages for the trespass only, but it was afterwards made a remedy to recover back the term itself, or the remainder of it, with damages. *Reg. Orig.* 227 b. *F. N. B.* 220, *F. G.* 3 *Bl. Com.* 199. *Litt. sect.* 322. *Crabb's Hist.* 290, 448. See 3 *Reeves' Hist.* 390. It is the foundation of the modern action of ejectment. See *Ejectment, Firma, Ferme*.

**EJECTMENT.** A species of mixed ac-

tion which lies to recover the possession of lands, with damages and costs for the wrongful withholding of them; being the principal method now in use for trying titles to land, and especially distinguished from other actions by the series of legal fictions on which it is founded. Ejectment is nothing more than the old personal action of *ejection of firm*, (*ejectione firmæ*), which lay to recover a term for years, adapted to the purpose of trying titles to the freehold, and the fictions which distinguished it are merely the essential features of the old action, (viz., a *lease*, an *entry*, and an *ouster*), retained in form, though long dispensed with in fact. It is still nominally an action to recover a *term for years*, but as, in order to do this, the lessor's title must first be made out, a recovery always necessarily involves the establishment of the title, and thus effectually, although collaterally and incidentally, accomplishes the object of the suit.\* The peculiarities of this action are fully explained in the elementary books to which it will suffice to refer. 3 *Bl. Com.* 199—205. 3 *Steph. Com.* 669—676. *Id.* 490. 2 *Crabb's Real Prop.* 1079, § 2477, *et seq.* *Wharton's Lex.* *Crabb's Hist.* 418, 448, 556. The fictions of ejectment have been made the subject of much criticism, but they have effectually survived the late sweeping changes in the remedial law of England, and are still retained in practice in several of the United States. 4 *Kent's Com.* 70, 71, note.

Ejectment has been described above as a *mixed* action. This is according to the arrangement of Blackstone, and it is expressly so denominated in England, by the stat. 3 & 4 Will. IV. c. 27. 3 *Bl. Com.* 199. 3 *Steph. Com.* 460, note (q). It is, however, classed by Mr. Crabb with *real* actions, and this is the arrangement of the New-York Revised Statutes. 2 *Crabb's Real Prop.* 1079. 2 *N. Y. Rev. St.* [302], 229. On the other hand, Mr. Stephen prefers to consider it as a *personal* action, which it originally was. 3 *Steph. Com.* 460, note (q).

EJECTMENT DE GARDE. L. Fr. Ejectment of ward. See *Ejectione custodia*.

EJECTUM. L. Lat. [from *ejicere*, to throw out, or up.] That which is thrown out of, or up by the sea (*quod è mari ejicitur*; *ejectus maris*;) wreck. *Cart. Hen.* III. A. D. 1226, given at length in 1 *Peters' Adm. Decisions*, Appendix, xliii.

That which is thrown out of a vessel into the sea in order to escape shipwreck;

or out of a house to escape destruction by fire. *Calvin's Lex. Jur.*

EJICERE. Lat. [from *e*, out, and *jacere* to throw.] To throw or cast out; to eject or dispossess. *Bract.* fol. 165, 166. *De-jicere*, (q. v.) was more commonly used in the civil law. Calvin, quoting Spiegelius, makes a distinction between these terms; *ejicere* signifying to keep out one who has not yet entered, *de-jicere*, to eject one who has already entered. *Calv. Lex.*

EJURARE. Lat. [from *e*, from, and *jurare*, to swear.] In feudal law. To abjure, renounce or disclaim by oath. *Lib. Feud.* 2, tit. 34.

EJUSDEM GENERIS. Lat. Of the same kind or nature. 1 *Powell on Devises*, 509, note. 1 *Atk.* 462. *Sugden's Law of Prop.* 220, 222.

ELABORARE. L. Lat. [from *labor*.] To gain, acquire, or purchase, as by labor and industry.

*Elaboratus*; property acquired by labour. *Spelman*.

ELARGATIO. L. Lat. [from *elargare*, to enlarge.] An enlargement. *Reg. Orig.* 250 b, 255. *Elargatio mansi vel curia*; the enlargement of a manse, or manor, or court, by taking in more land. *Id. ibid.*

ELECTIO. Lat. [from *eligere*, to choose.] Election; choice. *Electio est interna, libera et spontanea separatio unius rei ab alia, sine compulsionem, consistens in animo et voluntate*; election is the internal free and voluntary separation of one thing from another, without compulsion, consisting in intention and will. *Dyer*, 281.

*Electio semel facta non patitur regressum*. Election once made does not admit of going back, (or recall.) *Co. Litt.* 146.

*Electio non sinit rite et libere sine interruptione aliqua*. Elections should be made in due form and freely, without any interruption. 2 *Inst.* 169.

ELECTION. [L. Fr. *election*; Lat. *electio*, from *eligere*, to choose.] Choice; election; selection. Election is where a man is left to his own free will, to take or do one thing or another, which he pleases. *Co. Litt.* 144 b. *Termes de la ley.* *Bract.* fol. 113, 114. 6 *Cruise Dig.* 18. 2 *Co.* 35, *et seq.* 5 *Co.* 59. For the doctrine of election in equity, see *White's Equity Cases*, 223, 225—250, and Am. Editor's note. 2 *Story's Eq. Jur.* § 1075, *et seq.*

**ELECTUS**, pl. *Electi*. [from *eligere*, to choose.] Chosen. *Electi, triati et jurati*; chosen, tried and sworn. *Cro. Jac.* 119.

**ELEEMOSYNA**. Lat. [from Gr. *ἐλεημοσύνη*; Fr. *almoigne*.] In old English law. Alms. *Cowell*. In *liberam eleemosynam*; in free alms; in frank almoign. *Bract.* fol. 27 b. See *Frankalmoign*.

**ELEEMOSYNARIA**. L. Lat. [from *eleemosyna*, q. v.] The place in a religious house where the common alms were deposited, and thence by the almoner distributed to the poor. In old English, the *aumerie*, *aumbry* or *ambry*; words still used in common speech in the North of England, to denote a pantry or cupboard. *Cowell*.  
The office of almoner. *Cowell*.

**ELEEMOSYNARIUS**. L. Lat. [from *eleemosyna*, q. v.] In old English law. An almoner, or distributor of alms. An officer in religious houses who received the eleemosynary rents and gifts, and in due method distributed them to pious and charitable uses. *Cowell*.

An officer in the king's house called the king's almoner, or almner. *Co. Litt.* 94 a. *Fleta*, lib. 2, c. 23. See *Cro. Jac.* 48.

**ELEEMOSYNARY**. Relating to the distribution of alms, bounty or charity; charitable.

**ELEEMOSYNARY CORPORATIONS**. Lay corporations, or private charities, constituted for the perpetual distribution of the alms and bounty of the founder of them, to such persons as he has directed. They include hospitals for the relief of the poor, sick and impotent, and colleges and academies established for the promotion of learning and piety. 1 *Bl. Com.* 471. 3 *Steph. Com.* 171. 2 *Kent's Com.* 274.

**ELEGANTER**. Lat. In the civil law. Accurately. *Ware, J.*, 3 *Story's R.* 611, 636.

**ELEGIT**. Lat. [from *eligere*, to choose.] (He has chosen.) In practice. A writ of execution given by the statute of Westminster 2, (13 Edw. I.) c. 18, on judgments for debt or damages, or upon recognizance, and commanding the sheriff to deliver to the plaintiff all the defendant's goods and chattels, (beasts of the plough excepted,) and if these were not sufficient, a moiety of the defendant's lands, to hold until out of the rents and profits thereof the debt be levied, or till the defendant's interest be expired;

and during such term or period the plaintiff is called *tenant by elegit*, and the estate created by such tenancy is termed an *estate by elegit*. *Reg. Orig.* 299, 301. *Reg. Jud.* 2. *Co. Litt.* 289 b. 3 *Bl. Com.* 418. 2 *Id.* 161. 1 *Steph. Com.* 287. The statute gave the plaintiff his *election* to have either a *fiery facias* or this writ, and when the plaintiff prayed this writ, the entry on the roll was, *quod elegit sibi executionem fieri de omnibus catallis et medietate terras*, (that he hath elected to have execution of all the chattels and half of the land [of the defendant],) and the writ itself had a similar recital, *quia elegit sibi liberari omnia bona*, &c. Hence the name of *elegit*. *Reg. Orig.* and *Reg. Jud. ub. sup.*

This writ is still in use in some of the United States, as Virginia, Kentucky and Alabama. 4 *Kent's Com.* 431, 436, and notes. In England, a material alteration has lately been made in its form by the stat. 1 & 2 *Vict. c.* 110, s. 11, which provides that upon an *elegit* the sheriff shall deliver the whole of the defendant's lands, instead of a moiety as before. 1 *Steph. Com.* 287, 288. 3 *Id.* 652. *Sewell's Sheriff*, 204. 2 *Crabb's Real Prop.* 924, § 2288. 15 *Mees. & W.* 764.

**ELIDERE**. In civil and old English law. To defeat an adversary's pleading. *Bract.* fol. 399 b. Literally to crush or strangle.

**ELIGERE**. Lat. [L. Fr. *eslier*.] To choose.

**ELISIO**. Lat. [from *elidere*, q. v.] A defeating or destroying.

**ELISORS**, *Esisors*. [from Fr. *eslier*, to choose.] In practice. Electors or choosers. Persons appointed by the court to execute writs of *venire*, in cases where both the sheriff and coroner are disqualified from acting, and whose duty is to choose, that is, name and return the jury. 3 *Bl. Com.* 355. *Co. Litt.* 158. 3 *Steph. Com.* 597, note.

Persons appointed to execute any writ, in default of the sheriff and coroner, are also called *elisors*.

**ELL**. [Lat. *ulna*.] A measure of length, answering to the modern yard. 1 *Bl. Com.* 275.

**ELOIGN**, *Eloin*, *Eloine*, *Esloin*. [L. Fr. *eloigner*, *esloiner*; L. Lat. *elongare*.] In practice. To remove, or send a great way off, (*longum iter*).<sup>\*</sup> *F. N. B.* 68, 69, 74. 3 *Bl. Com.* 148. Applied to persons, by

stat. 13 Edw. I. c. 15, but generally to chattels. See *infra*.

**ELOIGNER**, *Alloigner*. L. Fr. To eloign; to remove or carry to a distance. *Eloigne*; eloigned. See *Eloign*, *Alloigner*.

**ELONGATA**. L. Lat. [from *elongare*.] In practice. Eloigned; carried away to a distance. The old form of the return made by a sheriff to a writ of replevin, stating that the goods or beasts had been *eloigned*, that is, carried to a distance, to places to him unknown. 3 *Bl. Com.* 148. 3 *Steph. Com.* 522. *F. N. B.* 73, 74. *Archb. N. Pract.* 552.

**ELONGATUS**. L. Lat. [L. Fr. *eloigne*.] Eloigned. A return made by a sheriff to a writ *de homine replegiando*, stating that the party to be replevied has been eloigned, or conveyed out of his jurisdiction. 3 *Bl. Com.* 129.

**ELOPEMENT**. [from *Belg. et*, marriage, and *loopen*, to run; or more probably from Sax. *geleoran*, (sometimes written *geleopan*,) to depart. *Blount*.] The voluntary departure of a wife from her husband, to live with an adulterer. *Cowell*. *Tomlins*. *Wharton*. This was always a forfeiture of dower, according to the lines

*Sponsa virum mulier fugiens, et adultera facta,  
Dote sua careat, nisi sponsi sponte retracta.*

**ELUVIONES**. L. Lat. Spring tides. *Towns. Pl.* 197.

**EMANARE**. L. Lat. To issue or award. *Emanare brevia*; to award writs. *Towns. Pl.* 28. *Quia erroneè emanavit*; because it issued erroneously. *Yelv.* 83.

**EMANCIPATION**. [Lat. *emancipatio*, from *mancupare* or *mancipare*, to sell.] In the Roman law. A setting free. The enfranchisement of a son by his father, which was anciently done by the formality of an imaginary sale. This was abolished by Justinian, who substituted the simpler proceeding of a manumission before a magistrate. *Inst.* 1. 12. 6.

In Louisiana, the emancipation of minors is expressly recognised and regulated by law. *Civil Code of Louis.* art. 367, et seq.

In England, the term *emancipation* has been borrowed from the Roman law, and is constantly used in the law of parochial settlements. 7 *Ad. & Ell. N. S.* 574, note.

**EMBARGO**. [from Span. *embargar*, *embaragar*, to detain.] A detention of a

vessel in port.\* A prohibition to sail. Johnson, J., 2 *Wheaton's R.* 148. A restraint or prohibition imposed by the public authorities of a country on merchant vessels, or other ships, to prevent their leaving its ports, and sometimes amounting, (as the U. S. embargo act of Dec. 22, 1807,) to an entire interdiction of commercial intercourse. *Jacobsen's Sea Laws.* 382. 1 *Kent's Com.* 60, 432. See *U. S. Digest*, Embargo and Non-intercourse. Embargoes are peculiar to a state of war, either actual or apprehended. They are imposed in England by the mere proclamation of the sovereign, without the intervention of parliament. 1 *Bl. Com.* 270, 271. The word is written by Cowell and Blount, *Imbargo*.

**EMBEZZLEMENT**. In criminal law. The appropriation to one's own use or benefit, of property or money entrusted to him by another; such as the embezzlement by clerks, servants and agents, of their employer's money, or property; the embezzlement by mariners of goods on board a vessel; and the embezzlement by public officers of the public money. 4 *Bl. Com.* 230, 231. 4 *Steph. Com.* 168, 169, 219. 3 *Kent's Com.* 194. *Lewis' U. S. Crim. Law*, 237. *Wharton's Am. Crim. Law*. 421. Embezzlement is distinguished from larceny, properly so called, as being committed in respect of property which is not, at the time, in the actual or legal possession of the owner. 4 *Steph. Com.* 168.

The secretion of property by a bankrupt, with intent to defraud his creditors. *Steph. Crim. Law*, 91, 92.

Embezzle is written by Cowell, *Imbezzle*, and *Imbesil*.

**EMBLEMES**. [from Fr. *emblem*, to sow, or *bled*, *ble*, grain; *emblavance de bled*, corn sprung up above ground.] The profits of sown land; the profits of the crop; growing crops of corn or grain. 2 *Bl. Com.* 122, 145. 1 *Steph. Com.* 242, 269. 2 *Crabb's Real. Prop.* 77, § 1046.

Any annual profit of land, produced by expense and labor, as distinguished from the permanent or natural profit of the earth. 2 *Bl. Com.* 122, 403. *Co. Litt.* 55, 56. 4 *Kent's Com.* 73, 109, 110.—The growing crops of those vegetable productions of the soil, which are annually produced by the labor of the cultivator. 2 *Steph. Com.* 257. 2 *Crabb's Real Prop.* 77, 78, §§ 1046—1048. *Id.* 355, § 1469. *Archbold's Landl. & Tenant*, 337. *Loveless on Wills*, 58, 59. *Bisset on Estates*, 276. *Sewell's Sheriff*, 235. *Grady on Fixtures*, 172.

**EMBLER.** L. Fr. To sow. *Si le lessee emblea la terre*; if the lessee sow the land. *Litt.* sect. 68.

To steal. *Emble ou robbes*; stolen or robbed. *Britt.* c. 4. *Si le chival fust emble hors de sa garde*; if the horse was stolen out of his custody. *Id.* c. 24.

**EMBRACEOR.** [L. Fr. *embrasour*; L. Lat. *imbraciator*.] In criminal law. One who practices or is guilty of embracery. One who labors a jury, or instructs them, or puts them in fear. *Co. Litt.* 369 a. Defined by statute 19 Hen. VII. c. 13, to be one who, when a matter is on trial between party and party, comes to the bar with one of the parties, (having received some reward so to do,) and speaks in the case, or privily labors the jury, or stands there to survey or overlook them, thereby to put them in fear or doubt of the matter. *Termes de la ley*. See *Embracery*.

**EMBRACERY.** In criminal law. The offence of attempting to influence a jury corruptly to one side, by promises, persuasions, entreaties, money, entertainments, and the like. 1 *Hawk.* P. C. 259. 4 *Chitty's Bl. Com.* 140, and note. 4 *Steph. Com.* 253. Punished in England by fine and imprisonment. *Id. ibid.* See *Lewis' U. S. Crim. Law*, 241.

**EMENDA, Emendæ.** L. Lat. [from Fr. *amende, emende*.] Amends; that which is given in reparation or satisfaction for a loss, or trespass committed; (*quod in restitutionem damni tribuitur*.) *Spelman.* *Emenda pro transgressionem.* *Bract.* fol. 230.

In Saxon law. A pecuniary compensation for an injury or crime. *Spelman.*

**EMENDALS.** [L. Lat. *emenda*.] An old word, still used in the accounts of the society of the Inner Temple, where so much in *emendals*, at the foot of an account, signifies so much in bank in the stock of the house, for the supply of all emergent occasions. *Cowell.*

**EMENDARE.** L. Lat. [*emendam solvere*.] In Saxon law. To make amends or satisfaction for any crime or trespass committed; to pay a fine; to be fined. *LL. Edw. Conf.* c. 35. *Spelman.* *Emendare se*; to redeem, or ransom one's life, by payment of a weregild. *LL. Longob.* cited *ibid.*

To amend or correct. See *Emendatio*.  
To repair. *Reg. Orig.* 44 b.

**EMENDATIO.** Lat. [from *emendare*,

q. v.] In old English law. Amendment, or correction. The power of amending and correcting abuses, according to certain rules and measures. *Cowell.*

In Saxon law. A pecuniary satisfaction for an injury; the same as *emenda*, (q. v.) *Spelman.*

**EMENDATIO PANIS ET CEREVISIÆ.** L. Lat. In old English law. The assizing of bread and beer, or the power of supervising and correcting the weights and measures of them. *Kennett's Par. Ant.* 196. *Cowell.*

**EMERCIABLE.** L. Fr. Liable to amercement; amerciable. *Britt.* c. 21.

**EMERGERE.** Lat. To arise; to happen. *Bract.* fol. 1 b, 109. *Stat. Marlbr.* c. 13. *Novis injuriis emersis, nova constituere remedia*; to ordain new remedies for new injuries that have arisen. *Fleta*, lib. 2, c. 2. *Remoto impedimento emergit actio*. The impediment removed, the action rises, (becomes available or efficacious.) *Shep. Touch.* (by Preston), 150.

**EMINENT DOMAIN.** [Lat. *dominium eminens*.] The inherent sovereign power of a state, which gives to the legislature the control of private property for public uses. 2 *Kent's Com.* 339, and note. — The ultimate right of the sovereign power to appropriate not only the public property but the private property of all the citizens within the territorial sovereignty, to public purposes. Story, J., 11 *Peters' R.* 420, 641. Webster, arg. S. C. Wood, C. J., 14 *Ohio R.* 147, 173.

The original and ultimate property claimed by the people of a state in and to all lands within the jurisdiction of the state.\* 1 *N. Y. Rev. Stat.* [718,] 714, § 1. 3 *Kent's Com.* 513. 4 *Id.* 3.

**EMPANEL.** The old form of writing *Impanel*, (q. v.) *Cowell.* *Blount.*

**EMPARKER.** L. Fr. [from *en, in*, and *parke*, a pound; L. Lat. *imparcare*.] To impound. *Britt.* c. 21, 51.

**EMPARL.** [from Fr. *enparler*, to speak together.] The old form of *imparl*, (q. v.) as *emparlance* was of *imparlance*, (q. v.) *Cowell.* *Blount.* The ancient orthography is, in strictness, correct. See *E, Enparler*.

**EMPESCHER.** L. Fr. To impeach. *L. Fr. Dict.* See *Impeach*.



**EMPHYTEUSIS**, *Emphyteosis*, *Emphiteosis*. Lat. [from Gr. ἐμψυτεύω, from ἐμψυτεύειν, to plant, or improve land.] In the civil law. An improving lease; a contract (of the class termed consensual,) by which houses or lands are given to be possessed forever, (*perpetuo fruenta traduntur*), or, at least, for a long time, upon condition that the land shall be improved, and that a small yearly rent or pension, (*pensio sive redditus*), shall be paid to the proprietor. *Inst.* 3. 25. 3. *Cooper's Notes*, in loc. *Hallifax Anal.* b. 2, ch. 18, num. 9. It is distinguished both from the contract of sale, and the contract of hiring, and rests on its own peculiar covenants. *Inst. ub. sup.* *Calv. Lex. Jurid.* It resembles the fee farm and copyhold estates of the English law. See *Emphyteuta*.

The right granted by such a contract, (*jus emphyteuticum*, or *emphyteuticarium*.) The real right by which a person is entitled to enjoy another's estate as if it were his own, and to dispose of its substance, as far as can be done without deteriorating it. 1 *Mackeld. Civ. Law*, 357, § 324. — An inheritable and transferable real right, which is granted by the proprietor of an estate to another, in consideration of a certain and invariable rent to be paid at the time agreed upon. *Id.* 359, Kaufmann's note.

The thing or estate itself, (*bonum seu pradium emphyteuticarium*.) in which such a right is given. *Id.* 356, note.

**EMPHYTEUTA**. Lat. [from *emphyteusis*, q. v.] In the civil law. The person to whom an *emphyteusis* is granted; the lessee or tenant under a contract of *emphyteusis*. *Calvin's Lex. Jurid.* 1 *Mackeld. Civ. Law*, 357, § 324, 325.

**EMPHYTEUTICUS**. Lat. [from Gr. ἐμψυτεύτικος.] In the civil law. Founded on, growing out of, or having the character of an *emphyteusis*; held under an *emphyteusis*. 3 *Bl. Com.* 232. *Calv. Lex. Jurid.*

**EMPIRE**, *Empire*. L. Fr. To make worse. *Britt.* c. 54.

**EMPLEAD**. The old (and strictly, the correct) form of *Implead*, (q. v.) from the Fr. *empler*, (q. v.) Otherwise written *Enpleet*. *Cowell*.

**EMPLEDER**, *Enpleder*. L. Fr. To implead. *Ne pleder ne estre empledé*; neither to plead, nor to be impleaded. *Britt.* c. 33. See *Id.* c. 11. *Ne empleront ne serront empledés*; shall neither implead nor be impleaded. *Litt.* sect. 76.

**EMPRISONER**, *Enprisoner*. L. Fr. To imprison. *Britt.* c. 66.

**EMPRISONEMENT**. L. Fr. Imprisonment. *Emprisonement par emprisonement*; imprisonment for imprisonment. *Britt.* c. 25.

**EMPROMPTER**, *Enprompter*. L. Fr. To borrow. *Emprompt*; borrowed; borrowing. *Britt.* c. 21.

**EMPTI ACTIO**. See *Actio ex emptio*.

**EMPTIO**, *Emtio*. Lat. [from *emere*, to buy.] A buying or purchase. *Calv. Lex. Jur.* *Bract.* fol. 61 b.

**EMPTIO ET VENDITIO**. Lat. Purchase and sale; sometimes translated *emption and vendition*. The name of the contract of sale in the Roman law. *Inst.* 3. 24. *Bract.* fol. 61 b. *Heinecc. Elem. Jur. Civ.* lib. 3, tit. 24. Sometimes made a compound word,—*emptio-venditio*. *Hallifax Anal.* b. 2, ch. 18. — A consensual contract to deliver a thing for a certain price. *Heinecc. ub. sup.* — An agreement for the seller to part with a thing for money given to him by the buyer. 3 *Salk.* 61.

**EMPTOR**. Lat. [from *emere*, to buy.] A buyer or purchaser. *Emptor tenetur venditori ad pretium, et venditor emptori, è converso, ad ipsam rem tradendam*; the buyer is bound to the seller for the price, and the seller, *è converso*, to the buyer, to deliver the thing sold. *Bract.* fol. 61 b.

*Emptor emit quam minime potest, venditor vendit quam maxime potest*. The buyer purchases for the lowest price he can, the seller sells for the highest price he can. 2 *Kent's Com.* 486. The law does not interfere with the right of each party to make the best bargain for himself, where no imposition is practised. *Id. ibid.* The same maxim is cited to show that a person cannot act as agent for another to sell property, and become himself the purchaser. 4 *Kent's Com.* 438.

*Caveat emptor*. (q. v.) Let the purchaser take care.

**EN**. L. Fr. [Lat. *in*.] In. *En quel compte, ou en quel maner, ou en quel fee, ou en quel baronie*; in what county, or in what manor, or in what fee, or in what barony. *Britt.* c. 51.

*Into*. *Le tenement soit turne en l'estate que il fuit avant*; the tenement shall be turned into the estate which it was before. *Id.* c. 50. *Turne en trespas*. *Id. ibid.*

EN APRES. L. Fr. Hereafter; afterwards. *L. Fr. Dict.*

EN ARERE. L. Fr. In time past. *Stat. de Judaismo. 2 Inst. 506.*

EN AUTRE (AUTER) DROIT. L. Fr. In another's right. *2 Bl. Com. 177.*

EN CERTAIN. L. Fr. In certain. *Mys en certain*; put in certain; reduced to certainty. *Britt. c. 69.*

EN CHIEFE. L. Fr. [L. Lat. *in capite*.] In chief. *Qui tenent en chiefe*; who hold in chief, or *in capite*. *Britt. c. 34.*

EN COSTE. L. Fr. On the side; collateral. *Kelham. See Coste.*

EN COURT. L. Fr. In, or into court. *Viendra en court*; shall come into court. *Britt. c. 26.*

EN DEMEYNE. L. Fr. In demesne. *En demeyne et en severalte. Britt. c. 42.*

EN GROS. L. Fr. In gross; by wholesale. *Britt. c. 21.*

EN JUGEMENT. L. Fr. In judgment; in or into court, (*in judicio*, q. v.) *Co'e les p'ties viendr' en jugement*; when the parties shall appear in court. *Britt. c. 24.*

EN LE (LA) MERCIE. L. Fr. [L. Lat. *in misericordia*.] In mercy. *Britt. c. 24. Litt. sect. 514.*

EN LE PER. L. Fr. In the *per*. *En le per et cui*; in the *per* and *cui*. *En le post*; in the *post*. Terms applied in the old books, to writs of entry. *Reg. Orig. 228, 229. 3 Reeves' Hist. 34. See In the per, &c.*

EN MORT MEYNE. L. Fr. [L. Lat. *in mortua manu*.] In a dead hand; in mortmain. *Britt. c. 43.*

EN PAIS, *En pays*. L. Fr. [L. Lat. *in patria*.] In the country. *Litt. sect. 618. See In pais.*

On the country. *Se soient mys en pays*; put themselves on the country. *Britt. c. 4.*

EN PLEYN VIE. L. Fr. In full life. *Britt. c. 106.*

EN POIGNE. L. Fr. In hand. *Quant le feoffor ad le fait en poigne*; when the

feoffor hath the deed in hand. *Litt. sect. 375.*

EN PRIMES. L. Fr. [Lat. *imprimis*.] In the first place; first. *Britt. fol. 1. Id. c. 26.* This phrase constantly occurs in the old French statutes. *Stat. Westm. 1, c. 1. Artic. sup. Chart.*

EN SON DAMAGE. L. Fr. [L. Lat. *in damno suo*.] In his damage; doing him damage; damage feasant, (q. v.) *En son pree, ou en ses blees, ou aillours* en son damage; in his meadow, or in his corn, or elsewhere in his damage. *Britt. c. 27.*

EN SON DEMEYNE COME DE FEE. L. Fr. In his demesne as of fee. *Britt. c. 51, 72. See Demesne.*

EN TESMOIGNANCE. L. Fr. [Lat. *in testimonium*.] In testimony or witness. *En tesmoignances des queux choses nous avons fait faire cestes nous lettres overts*; in testimony whereof we have caused these our letters to be made patent (open). *Stat. Confirm. Chartarum, c. 7. En testimoniance de quele chose, &c. Stat. of Tithes. 2 Inst. 639.*

EN VENTRE SA MERE. L. Fr. In its mother's womb. *Britt. c. 118.*

EN VIE. L. Fr. In life; alive. *Britt. c. 50.*

ENABLING STATUTE. In English law. The statute 32 Hen. VIII. c. 28, by which tenants in tail, husbands seised in right of their wives, and persons seised of an estate of fee simple in right of their churches, were empowered or enabled to make leases to endure for their lives, or twenty-one years, which could not do so before. *2 Bl. Com. 319. Co. Litt. 44 a. 3 Steph. Com. 139.*

ENBEVERER. L. Fr. To water, (as cattle.) *Britt. c. 61.*

ENBREVER. L. Fr. To write down in short; to abbreviate, or, in old language, *imbreviare*; to put into a schedule. *Britt. c. 1. See Imbreviare.*

ENCEINT, *Enceynt, Ensient*. L. Fr. Pregnant; with child. *Enceynte de enfaunt. Britt. c. 24.*

ENCEPPER. L. Fr. To confine; to put into the stocks (?) *Britt. c. 49.*

**ENCHASER.** L. Fr. To chase or hunt; to drive; to compel. *L. Fr. Dict. Kelham.*

**ENCHESON, Enchesson, Enchason, Enchison, Acheson.** L. Fr. Cause; reason; occasion. *Par quel encheson il se neya*; for what reason he drowned himself. *Britt. c. 1. Par encheson de matrimoyne*; in consideration of marriage. *Id. c. 34. Sans reasonable encheson*; without reasonable cause. *Stat. Westm. 1, c. 6.*

**ENCLAMER.** L. Fr. To claim. *Enclamaunt fraunk tenement*; claiming the freehold. *Britt. c. 42. Id. c. 70.*

**ENCLOSER.** L. Fr. To enclose. *Britt. c. 61. Enclos*; enclosed; shut in, or shut up. *Id. ibid. Id. c. 33.*

**ENCOMBRER, Encumbrer.** L. Fr. To encumber or hinder. *Britt. c. 68. Encombrement*; hindrance or encumbrance. *Id. c. 75.*

To possess a church; to be the incumbent. *Id. c. 92.*

**ENCONTER, Encontre, Encounter.** L. Fr. [Lat. *contra*.] Against; in opposition to; in violation of. *Britt. fol. 3. Id. c. 93, et passim.*

**ENCOUPER.** L. Fr. [Lat. *inculpate*.] To accuse or charge. *Encoupe*; accused. *Britt. c. 4, 110.*

**ENCOURER.** L. Fr. [Lat. *incurrere*.] To run; to run against, or bar. *Car nul temps en ceo cas ne luy encoure*; for no time in this case runs against him. *Britt. c. 38.*

**ENCRES.** L. Fr. Increase; accretion. *Si l'encres eyt este si subtil, que nul ne poet voier ne aperceyver cel encres que luy eyt estre encru par proces de temps*; if the increase have been so imperceptible that none might see nor perceive such increase which may have accrued by process of time. *Britt. c. 33.*

**ENCROACH.** [from L. Fr. *encrocher*, q. v.] To gain unlawfully upon the rights or possession of another; to take more than is one's right or due.\* "If the tenant holds by fealty and a hawk, and the lord *encroaches* a horse." *Plowd. 94 a.* "If the tenant holds by fealty and 2s. rent, and the lord *encroaches* 4s., or if the tenant holds by one horse and the lord *encroaches* two horses." *Id. ibid.* Cowell derives this word from the Fr. *accrocher*, in which he is

followed by Webster. But the L. Fr. *encrocher* (q. v.) was constantly used. Anciently written *Incroch* (q. v.)

**ENCROACHMENT.** [L. Fr. *encrochement*.] An unlawful gaining upon the rights or possessions of another. *Cowell.*

**ENCROCHER.** L. Fr. To pull or draw to, as with a hook, (*croc*); to take more than is due.\* *Plowd. 94, 95, (Fr. ed.)*

**ENCUSER.** L. Fr. To accuse. *Encuse*; accused. *Britt. c. 4, 22.*

*Encusement*; accusation. *Id. c. 22.*

*Encusour*; an accuser. *Id. c. 4.*

**END & EXPIRATION.** Held to be synonymous terms. *Plowd. 198.*

**ENDENT, Endente.** L. Fr. Endented; cut or divided in a line resembling the teeth of a saw. *Issint que l'escript soit endente, et que les justices eyent la une partie, et l'autre partie remeigne as presentours*; so that the writing be indented, and that the justices shall have one part, and the other part shall remain with the presentors. *Britt. c. 2. Deyvent estre doubles, trebles et endentes. Id. c. 39. Per fait endente*; by deed indented. *Litt. sect. 217. En faits endentes. Id. sect. 370. See Indent.*

**ENDENTURE.** L. Fr. An indenture. *Litt. sect. 370. See Indenture.*

**ENDITE.** An old form of *Indict*, (q. v.) Formed directly from the Fr. *enditer*, (q. v.)

**ENDITEMENT.** An old form of *Indictment*, used by Cowell and Blount; and derived from the Fr. *enditer*, (q. v.)

**ENDITER.** L. Fr. To indict. *Endite, endites*; indicted. *Britt. c. 1, 15.*

**ENDORMIR.** L. Fr. To sleep; to be or become dormant. *Endormy*; dormant or suspended. *Britt. c. 108.*

**ENDORSE.** [from L. Fr. *endorser, endorcer*.] To put on the back, (*en dors*.) To write on the back.

In mercantile law. To write one's name on the back of a bill, note or check. See *Indorse*.

*Endorse* is still used in preference to *Indorse* by writers of high authority, and is undoubtedly the correct form, if the word is to be considered as directly formed from the French. 3 *Kent's Com.* 88—93. See E.

**ENDORSEMENT.** See *Endorse*, *Indorsement*.

**ENDORSER.** See *Endorse*, *Indorser*.

**ENDOWMENT.** L. Fr. & Eng. [L. Lat. *dotatio*.] The assignment or bestowment of dower to, or upon a woman. 2 *Bl. Com.* 135.

The providing for the officiating ministers of a church, by setting apart a certain portion of lands, &c., for their maintenance, &c. *Id.* 21. 1 *Bl. Com.* 387. 3 *Steph. Com.* 111.

The provision itself, so made; (*dos ecclesiæ*.) *Com. Dig.* Dismes, B.

**ENFAUNT.** L. Fr. [from Lat. *enfants*.] An infant, (child.) *Britt.* c. 107.

An infant or minor. *Enfaunt dedens age*; an infant under age. *Britt.* c. 54, 126.

**ENFEOFF.** [L. Lat. *feoffare*, *infeudare*, q. v.] To give, bestow or convey a fee or fief. 2 *Bl. Com.* 310. See *Feoffment*.

**ENFORMER.** L. Fr. To inform. *Britt.* c. 84, 96.

**ENFRANCHISE.** [from L. Fr. *enfranchir*, q. v.] To make free. See *Enfranchisement*.

To incorporate a person into any body politic or corporation; to make a person a free denizen. *Cowell. Blount. Termes de la ley.*

**ENFRANCHISEMENT.** L. Fr. & Eng. [from *enfranchir*, q. v.] The act of making a person free, as a villein or bondman. *Enfranchisement* is a more general word than manumission, for that is properly applied to a villein. Every manumission is an enfranchisement, but every enfranchisement is not a manumission. *Co. Litt.* 137 b.

The incorporating a person into any society or body politic, and thereby imparting to him its liberties and privileges. *Cowell. Termes de la ley.* 11 *Co.* 91. The making a man free of a company or corporation. *Co. Litt.* 137 b.

**ENFRANCHISEMENT OF COPYHOLDS.** In English law. The conversion of copyhold into freehold tenure, by a conveyance of the fee simple of the property from the lord of the manor to the copyholder, or by a release from the lord of all seigniorial rights, &c., which destroys the customary descent, and also all rights and privileges annexed to the copyholder's estate. 1 *Watkins on Copyholds*, 362. *Scriven*

*on Copyholds*, 616. 2 *Steph. Com.* 51. 1 *Id.* 208. 1 *Crabb's Real Prop.* 693, 695, §§ 894, 895, 897.

**ENFRAUNCHIR, Enfranchir.** L. Fr. [from *en*, in, and *fraunk*, free.] To make free; to confer a privilege or liberty; to enfranchise, (q. v.) *Enfraunchys par chartres. Britt.* c. 120.

**ENFREINDRE, Enfreinder.** L. Fr. To break; to violate or infringe. *L. Fr. Dict. Enfreint*, broken. *Nostre peas enfreynt*; our peace broken. *Britt.* c. 29.

**ENGAGER.** L. Fr. To pledge. *Kelham. See Gage.*

**ENGENDRER.** L. Fr. To beget, or engender. *Britt.* c. 36.

**ENGENDRURE.** L. Fr. [from *engendrer*, q. v.] Issue. *Britt.* c. 77.

**ENGETTER.** L. Fr. To eject. *Engette*; ejected. *Britt.* c. 32, 34, 40.

**ENGIN.** See *Engyn*.

**ENGLECERY, Englecherie, Englescherie, Engleschery.** L. Fr. & Eng. [L. Lat. *Englescheria*, *Engleceria*.] In old English law. The fact of being an Englishman; Englishery; (*Anglietas, nativitas Anglica*.) *Spelman voc. Englecheria. Bract. fol.* 135. *Fleta*, lib. 1, c. 30. 2 *Reeves' Hist.* 22. 4 *Bl. Com.* 195. In Bracton's time it was the law that, where a person was found killed he was presumed to be a Frenchman, (*Francigena*), unless Engleschery, (that is the fact of his being an Englishman,) was proved by the relations and presented before the justices. *Bract. ub. sup. Britt.* c. 6. This law was introduced first by Canute and afterwards by William the Conqueror, for the greater protection of their respective subjects from assassination; a much heavier fine being imposed upon the vill or hundred, for killing a Dane or Norman, than a native. *Spelman.* It was an object, therefore, to prove Engleschery, which relieved the country from this burden. *Id.* 4 *Bl. Com.* 195. Englishery was abolished by statute 14 Edw. III. c. 4. *Id. ibid.*

**ENGLETERRE.** L. Fr. England. *Britt. fol.* 1.

**ENGLEYS.** L. Fr. English; an Englishman. *Britt.* c. 6.

**ENGROSS.** [from Fr. *en*, in, and *gros*, *grosse*, large.] In practice. To write in a gross, or *large* strong hand. 1 *Bl. Com.* 183.

To copy in a large or fair hand; to copy upon parchment or stamped paper; to copy a paper for the purpose of filing.

In old conveyancing, a fine was said to be engrossed when the chirographer made the indentures of the fine and delivered them to the party to whom the consance was made. 5 *Co.* 39 b.

In criminal law. To buy up any commodity in *large* quantities, so as to obtain the exclusive possession or monopoly of it, with an intent to sell it at an unreasonable price.\* 4 *Bl. Com.* 158. See *Engrossing*.

**ENGROSSER.** [L. Lat. *ingrossator*.] A clerk or copyist.

One who practices, or is guilty of engrossing. See *Engrossing*.

**ENGROSSING.** In English law. The getting into one's possession, or buying up *large* quantities of corn, or other dead vic-tuals, with intent to sell them again. The total engrossing of any other commodity, with intent to sell it at an unreasonable price. 4 *Bl. Com.* 158, 159. This was, until recently, a misdemeanour, punishable by fine and imprisonment. *Id. ibid. Steph. Crim. Law*, 95. Now repealed by 7 & 8 *Vict. c.* 24. 4 *Steph. Com.* 291, note.

**ENGYN, Engin, Ingen, Ingene.** L. Fr. [from Lat. *ingentium*, contrivance.] Fraud; deceit; ill design. *Britt. c.* 4.

**ENHAUNCER.** L. Fr. To raise; to lift up; to set up. *Enhaunce*, raised. *Ou enhaunce ou abatu*; raised or lowered. *Britt. c.* 61. Applied to material objects.

**ENHERITANCE.** L. Fr. & Eng. The old form of *inheritance*, (q. v.) *Cowell*.

**ENHERITER.** L. Fr. To inherit. *Cestuy que doit enheriter al pere doit enheriter al fms.* He who should have inherited to the father shall inherit to the son. See *Cestui*.

**ENITIA, (ENICIA) PARS.** L. Lat. In old English law. The part or share of the eldest. The part which the eldest sister had, where a partition of lands was made by friends chosen by agreement of par-ceners, and she chose first one of the parts so divided. *Litt. sect.* 244, 245. *Co. Litt.* 166 b. *Stat. Marlbr. c.* 9. *Reg. Orig.* 177. See *Eisetia, Esneey*.

**ENJOIN.** [from L. Fr. *enjoindre*; Lat. *injungere*.] To impose or lay upon; to lay a command upon; to command.

In practice. To command a person to refrain from doing a thing; to prohibit or restrain by express command. See *Injunction*.

**ENJOYNDRE.** L. Fr. To command; to enjoin. *Et puis lour soit enjoynt que si, &c.*; and afterwards it shall be enjoined upon them that if, &c. *Britt. c.* 29. See *Id. cc.* 70, 74.

**ENKE.** L. Fr. Ink. *Diversite de mayn, ou de enke en l'escripture*; difference of hand or of ink in the writing. *Britt. c.* 28.

The English word *ink*, though closely and obviously formed from the French, fol-lows the Latin *incaustum*, in its initial let-ter. See *E, Incaustum*.

**ENLARGE.** [from L. Fr. *enlarger*, q. v.] In practice. To extend; to add to; to grant further time. *To enlarge* a rule is to extend the time for a party to show cause under it. *Holthouse*.

**ENLARGER.** L. Fr. To enlarge; to make more comprehensive; to make wider. Applied both to rights and to material ob-jects. *Puit home enlarger le don*; a man may enlarge the gift. *Britt. c.* 39. *Chemyn enlargy*; a way or road enlarged or widened. *Id. c.* 63.

**ENLARGER L'ESTATE.** L. Fr. In conveyancing. The enlarging of an estate; as where an immediate remainder-man in fee releases all his right to the particular tenant in possession, and his heirs; this gives the latter the estate in fee. 2 *Bl. Com.* 324. *Litt. sect.* 465. 1 *Steph. Com.* 480.

**ENLARGING STATUTE.** A reme-dial statute which enlarges or extends the common law. 1 *Bl. Com.* 86, 87.

**ENORMIS.** Lat. [from *e*, out of, and *norma*, rule.] Out of rule or measure; irregular; immoderate; excessive.

Out of rule or law; against law; unlaw-ful; wrongful. See *Enormia*.

Enormous; heinous. *Enormis trans-gressio*; a heinous trespass. *Stat. Westm.* 2, c. 29.

**ENORMIA.** L. Lat. [from *enormis*, q. v.] In old practice and pleading. Un-lawful or wrongful acts; wrongs. *Et alia enormia*; and other wrongs. This phrase constantly occurs in the old writs of trea-

pass in the Register. *Reg. Orig.* 92 b, 93. It occurs also in the old declarations in trespass, and is literally translated in the modern forms; the original *alia enormia* being still retained as the name of the clause containing it. See *Alia enormia*.

**ENPARLER.** L. Fr. To speak or talk together; to emparl or imparl. Applied by Britton to the deliberation of a jury. *Et tauntost voysent les jurours en une part par euz mesmes, pur enparler*; and presently the jurors shall go to one side [aside] by themselves, to imparl or talk together. *Britt.* c. 52.

**ENPRISONER.** L. Fr. To imprison. *Britt.* c. 86. See *Emprisoner*.

**ENPROUER.** L. Fr. To improve. *Britt.* c. 67.

**ENQUERER.** L. Fr. [from Lat. *inquirere*.] To inquire; to make inquiry. *Britt.* c. 51. *Enquerge*; he shall inquire. *Id.* c. 1.

**ENQUEST.** L. Fr. & Eng. [from Fr. *enquerer*, q. v.] Inquisition or inquiry; an inquest; the inquisition of a jury. *Britt.* c. 1, 33.

A jury. *Litt.* sect. 368.

*Enquest* was the old English form of *Inquest*, and is used by Cowell.

**ENROLL.** [from L. Fr. *enrouler*; L. Lat. *irrotulare*.] In practice. To put in, or on a roll; to write, transcribe or enter on a roll of parchment, or other material. See *Roll*, *Enrouler*.

To enter on record, as a decree in chancery. 2 *Daniell's Chanc. Pract.* 1220.

To record, as a deed. *Stat.* 27 *Hen.* VIII. c. 16.

*Inroll* was an old English form of this word, which is used by Cowell, and adopted by some modern writers.

**ENROLLMENT.** [from L. Fr. *enroulement*; L. Lat. *irrotulatio*.] An entering on a roll, or on record; the recording of a deed. See *Enroll*. Written by Cowell, *Inrollment*.

**ENROULER.** L. Fr. [from *en*, in or on, and *roule*, a roll.] To enroll; to put or write on a roll. *Enrouler en roule de coroner*; to enroll on the roll of the coroner. *Britt.* c. 1. *Les nosmes des fuytys soient enroules de deux routes*; the names of the fugitives shall be enrolled in two rolls. *Id.* c. 26.

*Enroulement*; enrollment. *Ou enroulement de court que porte record*; or enrollment of a court of record. *Id.* c. 67.

**ENS.** L. Lat. Being; existence. 3 *Bl. Com.* 322.

**ENSEAL.** [from L. Fr. *enseler*, q. v.] To seal. *Ensealing* is still used as a formal word in conveyancing.

**ENSELER.** L. Fr. To seal. *Ensele desoult les seals des jurours*; sealed under the seals of the jurors. *Britt.* c. 58. *Ensele de son seal*; sealed with his seal. *Id.* c. 121.

**ENSEMENT, Ansement.** L. Fr. Also; likewise; in like manner. *Stat. Glocest.* c. 4. *Kelham*.

**ENSENSES.** L. Fr. Instructed. *Britt.* c. 4.

**ENSERVE.** L. Fr. [from *enserver*, q. v.] Servile; subject to service; the opposite of free. *Ascuns fraunches, et ascuns enserves*; some free, and some servile. *Britt.* c. 54.

**ENSERVER.** L. Fr. To make subject to a service or servitude. *Britt.* c. 54.

**ENSEVILIR.** L. Fr. [from Lat. *sepelire*, to bury.] To bury. *Ensevely*; buried. *Britt.* c. 11.

**ENSI, Ensy.** L. Fr. So; thus; also; in like manner. *Kelham*.

**ENTAIL.** [L. Fr. *entaille*.] A fee entailed; that is, abridged, curtailed or limited to certain heirs.\* *Cowell. Blount.* 2 *Bl. Com.* 112, *et seq.* See *To entail*, *Fee tail*.

To **ENTAIL.** [from L. Fr. *tailler*, from L. Lat. *talliare*, to cut, cut off or limit.] To create an estate in tail; to settle an estate according to a certain rule of descent; to limit to certain heirs.\* 2 *Bl. Com.* 113, *et seq.* See *Tail*.

**ENTENCION.** L. Fr. [from Lat. *intentio*, q. v.] In old pleading. A plaintiff's count or declaration. *Britt.* c. 92. See *Entente*.

**ENTENDAUNT.** L. Fr. [from *entendre*, q. v.] Attendant. *Britt.* fol. 1 b.

**ENTENDEMENT.** L. Fr. [from *en-*

*tendre*, q. v.] Understanding; meaning; signification. *En ceo mot, mort, y ad double entendement*; in this word *mort* (dead) there is a double meaning. *Britt.* c. 92. See *Id.* c. 53.

**ENTENDMENT.** The old form of *Intendment*, (q. v.) derived directly from the Fr. *Entendement*, (q. v.) and used by Cowell to denote the true meaning or signification of a word or sentence; that is, the understanding or construction of law.

**ENTENDRE.** L. Fr. To understand. *Et fait a entendre*; and it is to be understood. *Britt.* c. 40.

To intend. *L. Fr. Dict.*  
To attend. *Kelham.*

**ENTENTE.** L. Fr. [L. Lat. *intentio*, q. v.] In old pleading. The plaintiff's count, or declaration in a real action. *Et puis die le pleyntyfe sa entente, solonc les pointz del brefe original*; and then the plaintiff shall say (or repeat) his count according to the points of the original writ. *Britt.* c. 74. See *Id.* c. 75, 91, 47.

**ENTER.** [from L. Fr. *entrer*, (q. v.); L. Lat. *intrare*.] To take actual possession of lands; to go into, or upon them. See *Entry*.

In practice. To place a thing properly before a court, and usually in writing; to put upon, or among its records; as to *enter* an appearance, rule or judgment. The word has nearly the same sense of *setting down in writing*, either at large, or in an abridged form, as in mercantile accounts.

**ENTER, Entre.** L. Fr. In; within. See *Entre*.

**ENTERING.** See *Entry*.

**ENTERLESSE.** L. Fr. Omitted. *Stat. of Additions*, 1 Hen. V. c. 5. 2 *Inst.* 665.

**ENTERPLEDER.** The old form of *Intpleader*, (q. v.) used by Cowell.

**ENTIER.** L. Fr. Entire; whole. *Entier sanke*; the whole blood. *Litt.* sect. 2.

**ENTIRETE, Entiertie.** L. Fr. The whole; the entirety. *Kelham.*

**ENTIRETY.** [L. Fr. *entiertie*, from *entier*, whole.] The whole, in contradistinction to a moiety or part only. When land is conveyed to husband and wife, they do

not take by moieties, but both are seized of the entirety. 2 *Kent's Com.* 132. 4 *Id.* 362. Parceners, on the other hand, have not an entirety of interest, but each is properly entitled to the whole of a distinct moiety. 2 *Bl. Com.* 188.

**ENTRE.** L. Fr. In; within. *Entre ses bras*; within her arms. *Britt.* c. 23. A term applied to a husband *de facto*. See *Infra brachia*.

**ENTRE.** L. Fr. [from *entrer*, q. v.] Entry. *Brefe d'entre*; a writ of entry. *Britt.* c. 114.

**ENTREBAT.** L. Fr. An intruder or interloper. *Britt.* c. 114.

**ENTRELIGNURE.** L. Fr. Interlineation. *Kelham.*

**ENTREMETTRE.** L. Fr. [from Lat. *intromittere*, to let or put in.] To intermeddle; to intrude into. *Britt.* c. 58. *Qui se ad entremys del office*; who shall have intruded into the office. *Id.* c. 16.

**ENTRER.** L. Fr. [from Lat. *intrare*, q. v.] To enter. *Entrast*; enters. *Britt.* c. 114. *Entrant*; enter. *Id. ibid.*

**ENTREVAL.** L. Fr. An interval. *Après long entreval.* *Britt.* c. 111.

**ENTRUSION.** An old form of *Intrusion*, (q. v.) used by Cowell.

**ENTRY.** [L. Lat. *intratio*.] In practice. The putting a proceeding on record, in proper technical language and order.\* A judgment record is composed of *entries* of the various proceedings in the action, actual or formal, in a certain order. *Books of entries* are books containing forms or precedents of the proceedings in various actions, as they appear on record. They were formerly much relied on. 3 *Bl. Com.* 271, note.

**ENTRY.** [L. Fr. *entre*, *entree*; L. Lat. *ingressus*, *introitus*.] The actual taking possession of lands or tenements, by entering into, or setting foot upon the same; an extrajudicial and summary remedy against certain species of injury by ouster, (viz., abatement, intrusion, and disseisin,) used by the legal owner when another person who has no right has previously taken possession of lands or tenements. 3 *Bl. Com.* 5, 174. 1 *Steph. Com.* 469, 470. *Crabb's Hist.* 402, 403. *Burton's Real Prop.* 120,

to seq. 1 *Hilliard's Real Prop.* 83. 2 *Id.* 151. *Tomlins.* It must be peaceable and without force. 3 *Bl. Com. ub. sup.*

**ENTRY.** In the law of burglary. An act, which in addition to breaking (q. v.) is essential to complete the offence of burglary. Any, the least degree of entry, with any part of the body, or with an instrument held in the hand, is sufficient for this purpose; as to step over the threshold, to put a hand or a hook in at a window to draw out goods, or a pistol to demand one's money, are all of them burglarious entries. 1 *Hal. P. C.* 555. 4 *Bl. Com.* 227. So if the prisoner breaks open a shop window, and with his hand takes out goods, the offence is complete. *Foster's C. L.* 107. *Russ. & Ry. C. C.* 499. Introducing the hand between the glass of an outer window and an inner shutter is sufficient entry to constitute burglary. *Id.* 341. See 4 *Chitty's Bl. Com.* 227, note. 1 *Russell on Crimes*, 794—797. *Wharton's Am. Crim. Law*, 356. *Lewis' U. S. Crim. Law*, 131.

**ENTRY, Writ of.** [L. Fr. *breve d'entre*; L. Lat. *breve de ingressu*.] A species of real action, of great antiquity in English law, and, until a comparatively recent period, the general remedy to recover the possession of lands when wrongfully withheld from the owner. 3 *Bl. Com.* 180, 183. Its object was to regain the possession of lands of which the demandant, or his ancestors, had been unjustly deprived by the tenant of the freehold, or those under whom he claimed, and hence it belonged to the possessory division of real actions. 3 *Bl. Com.* 180. *Roscoe's Real Act.* 3. It decided nothing with respect to the right of property, but only restored the demandant to that situation in which he was, (or by law ought to have been,) before the dispossession committed. 3 *Bl. Com.* 180. There were many varieties of writs of entry under the several titles of *Dum fuit non compos mentis*, *Dum fuit infra ætatem*, *Dum fuit in prisiona*, *Ad communem legem*, *In casu proviso*, *In casu consimili*, *Cui in vita*, *Sur cui in vita*, *Cui ante divortium*, *Sur cui ante divortium*, *Quare ejecit infra terminum*, *Ad terminum qui præterit*, and *Causa matrimonii prælocuti*; all of which have been recently abolished in England, by statute 3 & 4 Will. IV. c. 27. *Roscoe's Real Actions*, 3, 88—100. See the above titles.

The writ of entry was directed to the sheriff, requiring him to command the tenant of the land that he render (*præcipe quod reddat*) to the demandant, the land in question, which he claims to be his right

and inheritance, and of which (*de quo, or de quibus*) the said tenant unjustly and without judgment disseised [him or] his ancestor, within the time limited by law for such actions, or that upon refusal, he do appear in court on such a day, to show wherefore he hath not done it. *Reg. Orig.* 229. This was the common or simple form of the writ (called a writ of entry in the *quo* or *quibus*), where it was brought against the party himself that did the wrong. 3 *Reeves' Hist.* 33. 3 *Bl. Com.* 181. If, however, he had made any alienation of the land, or it had descended to his heir, that circumstance was required to be alleged in the writ. This led to certain variations in the form, from which the writ was technically called a writ of entry "in the *per*," "in the *per* and *cui*," or, "in the *post*," according to the number of descents or alienations which had taken place. *Id. ibid. Reg. Orig.* 229. See *infra*.

**ENTRY IN THE PER, Writ of.** A writ of entry so called from the words "*et in quod idem A. non habet ingressum nisi PER E. qui illud ei dimisit*"; and into which the said A. (the tenant) hath not entry unless by E. (the original wrong doer,) who demised it to him. 3 *Bl. Com.* 181. 3 *Reeves' Hist.* 34. This was called a writ of entry on the first degree, or on the first alienation or descent of the land. *Id. ibid.*

**ENTRY IN THE PER AND CUI, Writ of.** A writ of entry, so called from the words "*et in quod non habet ingressum nisi PER C. cui D. illud dimisit, &c.*"; and into which he hath not entry unless by C. to whom D. demised it, &c. *Reg. Orig.* 229. 3 *Reeves' Hist.* 33. 4 *Bl. Com.* 181. This was called a writ of entry in the second degree. *Id. ibid.*

**ENTRY IN THE POST, Writ of.** A writ of entry, so called from the words "*et in quod non habet ingressum nisi POST disseisinam quam L. inde injuste et sine judicio fecit C. patri vel alio antecessori prædicti B, &c.*"; and into which he hath not entry unless after the disseisin which L. unjustly and without judgment thereof made to C. the father, or other ancestor of the aforesaid B. &c. *Reg. Orig.* 229. This writ was given by the statute of Marbridge, (c. 30,) in cases where the number of alienations or descents exceeded the usual degrees, no mention of degrees being required to be made in it. The writ merely alleged the injury of the wrong-doer, without deducing all the intermediate title from him to the tenant. 3 *Bl. Com.* 182.



**ENURE.** [from L. Fr. *enurer*, *enuer*, *urer*.] To take effect; to take place; to operate. *Un releas prendra effect et urera*; a release shall take effect and *enure*. *Litt.* sect. 305, 306, 307. See *Id.* sect. 465, 479, 486. *Co. Litt.* 193 a. b. 273.

**ENVEER, Enveyer.** L. Fr. To send. *Kelham.* See *Envoyer*.

**ENVERS, Enverz.** L. Fr. Against. *Litt.* sect. 58.

**ENVOYER.** L. Fr. To send. *Envoye*; sent. *Britt.* c. 21. *Envoyes a nostre gaole.* *Id.* c. 100. *Envoyable.* *Id.* c. 110.

**ENZ.** L. Fr. In; within; but. *Kelham.*

**EO.** Lat. In the civil law. In so much, for as much; (*in tantum.*) *Calv. Lex. Jur.* Used also by the canonists.

For the reason, (*propterea.*) *Id.*  
There, (*ibi.*) *Id.*

**EO INSTANTE.** L. Lat. At that instant; at the very or same instant; immediately. 1 *Bl. Com.* 196, 249. 2 *Id.* 168. *Co. Litt.* 298 a. 1 *Co.* 138.

**EO INTUITU.** L. Lat. With or in that view; with that intent. See *Intuitus*.

**EO LOCI.** Lat. In the civil law. In that state or condition; in that place (*eo loco.*) *Calv. Lex. Jur.*

**EO NOMINE.** Lat. Under that name; by that appellation. *Perinde ac si eo nomine tibi tradita fuisset*; just as if it had been delivered to you by that name. *Inst.* 2. 1. 43. A common phrase in the books.

**EODEM.** Lat. By the same; by the said. 2 *Ld. Raym.* 888, arg. See *Idem*.

**EORLE.** Sax. [L. Lat. *eorla*.] A word adopted by the Saxons from the Danish *jarl*, and applied to the *ealdorman*, and afterwards to the count (*comes*) of the Normans. Hence the English *earl*. *Spelman*, voc. *Eorla*. *Gilb. C. Pleas, Introd.* notes. 1 *Bl. Com.* 398. See *Earl*. The first mention of *eorl* or *eorle* is in the laws of Canute, par. 2, c. 69. *Spelman*, *ub. sup.* Through ignorance of the Saxon letters, this word is printed *cople*, in the French edition of Montesquieu's *Spirit of Laws*, (ed. Sarrebruck, 1782, lib. 30, c. 18,) and the error is retained in the English translation. (Am. ed. Worcester, 1802.)

**ΕΙΤ ΑΥΤΟΦΘΕΡΩ, Εἴ'αυτοφώρα.** Gr. [from *ἐν*, in, *αὐτός*, very, and *φώρα*, theft.] In the (Greek) civil law. In the very act; in the act of theft. *Inst.* 4. 1. 3. *Schrev. Lex.* See *Furtum manifestum*.

**ΕΠΙΕΙΚΕΙΑ, Ἐπιεικεία.** Gr. [from *ἐν*, and *ἵκω*, to be like.] Equity, equality; the fitting, adapting or adjusting of one thing to another, (*convenientia.*)\* *Calvin's Lex. Jur.* See *Equity*.

**ΕΠΙΕΙΚΕΣ, Ἐπιεικές.** Gr. [from *ἐν*, and *ἵκω*, to yield, to be like.] Equitable; fit or becoming; moderate or mild; (*æquum et bonum.*) *Calv. Lex. Jur. Schrev. Lex.*

Equity, as moderating the rigor of the law, or equalizing and adjusting rights according to circumstances. See *Equity*.

**EPISCOPALIA.** L. Lat. [from *episcopus*, q. v.] In ecclesiastical law. Synodals, pentecostals, and other customary payments from the clergy to their diocesan bishop, formerly collected by the rural deans. *Cowell.*

**ΕΠΙΣΚΟΠΙΟΣ, Ἐπισκοπος.** Gr. [from *ἐπισκέπτομαι*, to look around upon, to oversee.] A bishop; an overseer, supervisor or superintendent. *Calv. Lex. Jur.* See *Episcopus*.

**EPISCOPUS.** Lat. [from Gr. *ἐπίσκοπος*, q. v.] A bishop. *Calv. Lex.*

**EPISTOLA.** Lat. In old European law. A letter or epistle. *Calv. Lex. Jurid.*

A charter; any instrument in writing for the conveyance of lands or the assurance of contracts; (*instrumentum quo prædia conceduntur, pactionesque firmantur.*) *Spelman.* *Spelman* refers to Cassiodorus and Marculfus to show that all deeds or charters were, during, and after the lower empire, (*ab inclinato imperio,*) called *epistolæ*; commencing as a letter, with an address and salutation. Hence the origin of the ancient form of charters or deeds in England, which commenced with—*Omnibus Christi fidelibus ad quos hoc præsens scriptum pervenerit, N. de D. salutem. Sciatis, &c.* "To all the faithful in Christ to whom this present writing shall come, N. of D. sends greeting: Know ye, &c." The same form of commencement is still preserved, with some modification, in our modern deeds poll.

**EPISTOLA.** Lat. In the civil law. An opinion of the emperor upon a case submitted to him; a rescript. *Inst.* 1. 2. 6.

**Equality is equity.** *Francis' Max.* 9, max. iii. Thus where an heir buys in an incumbrance for less than is due upon it, (except it be to protect an incumbrance to which he himself is entitled) he shall be allowed no more than what he really paid for it, as against other incumbrancers upon the estate. 2 *Vent.* 353. 1 *Vern.* 49, S. P. 1 *Salk.* 155. For the taking away one man's gain to make up another's loss, is making them both equal; and here the gain the heir would have made, if the whole money due on the incumbrance should be allowed him shall be taken from him, to make up the loss of the other incumbrancers upon the estate. *Francis' Max. ub. sup.* This maxim is also applied to cases of contribution between sureties and others; to cases of abatement of legacies, where there is a deficiency of assets, and especially to cases of the marshalling and distribution of equitable assets. 1 *Story's Eq. Jur.* § 64 f. See *Æquitas*.

**EQUES.** Lat. A knight. *Spelman.* 1 *Bl. Com.* 404. So called because serving on horseback. *Id. ibid.*

*Equus auratus*; a knight, so called from the gilt spurs he wore. *Id. ibid.* *Spelman*, who himself bore this title, says its object was to distinguish one who had been created a knight with due ceremony (*ritu honorario institutum*) from one who merely assumed the title. According to Cowell, it is never used in law, *miles* (q. v.) being the proper word.

**EQUITABLE ASSETS.** Such assets as at law cannot be reached by a creditor. 3 *Wooddes. Lect.* 290, and notes. Equitable assets are all assets which are chargeable with the payment of debts or legacies in equity; and which do not fall under the description of legal assets. 1 *Story's Eq. Jur.* § 552.

**EQUITABLE ESTATE.** An estate acquired by operation of equity, or cognizable in a court of equity; such as the estate or title of a person for whose use or benefit lands are held in trust by another, the latter having the legal estate; and the estate of a mortgagor, after the mortgage has become forfeited by non-payment, and before foreclosure.\* 1 *Steph. Com.* 217, 285, 328. 2 *Crabb's Real Prop.* 5, § 947, 442. *Holthouse.* See *Equity of redemption, Trust*.

**EQUITABLE MORTGAGE.** A mortgage arising in equity, out of the transactions of the parties, without any deed or

express contract for that special purpose. 4 *Kent's Com.* 150. Thus, if a debtor deposits his title deeds with a creditor, it is evidence of a valid agreement for a mortgage, and amounts to an *equitable mortgage*, which is not within the operation of the statute of frauds. *Id. ibid.* *Burton's Real Prop.* 484, pl. 1570. *Cross on Lien*, chap. x. *Miller's Law of Equitable Mortgages*, 1, et passim. 2 *Crabb's Real Prop.* 848—855, §§ 2203—2208. *White's Lead. Equity Cases*, 440. *Id.* 465, (Am. ed.) note. In Pennsylvania, the validity of this kind of mortgage is not recognized. 3 *Penn. St. (Barr's) R.* 233.

The mortgage of an equitable estate or interest. *Holthouse.* *Miller's Law of Eq. Mortg.* 1.

**EQUITATURA.** L. Lat. [from *equitare*, to ride.] In old English law. Traveling furniture, or riding equipments, including horses, horse harness, &c. *Reg. Orig.* 100 b. *Stat. Westm.* 2, c. 39.

**EQUITY.** [Lat. *æquitas*; from *æquus*, equal, even, just; Gr. *ἐννομία*, qq. v.] In a general sense—natural right or justice, as addressed to the conscience, independently of any express or positive rule or law; otherwise termed *natural* or *moral* equity. In this large sense, equity belongs to the science of morals rather than of jurisprudence. See 1 *Story's Eq. Jur.* §§ 1, 2.

In a stricter sense,—the application of the principles of natural right and reason in the actual administration of justice; either by supplying rules for cases not provided for by the positive law, by mitigating the rigor of the law itself, by a liberal and rational interpretation of its rules, or by adapting its remedies more exactly to the exigencies of particular cases. Otherwise termed *civil* equity. This definition presents equity as a part or branch of jurisprudence, but expresses its ancient more fully than its modern meaning, being founded essentially on the definition of Aristotle—*ἐναντιόθεσμα του νομου ἢ ἐλλείπει διὰ τὸ καὶ ὅλου*, (the correction of the law, where it is defective by reason of its universality.) *Arist. Eth. Nicom.* lib. v. c. 10. This is equity, as contradistinguished from strict or mere law, (*strictum et summum jus*), and as it was recognized and applied in Roman jurisprudence; it being the province of the prætor, or equity judge, to assist, supply, interpret and moderate the law. *Dig.* 1. 1. 7. On nearly the same basis, a modern writer of authority has defined equity to be “a judicial interpretation of laws, which presupposing the legislature

to have intended what is just and right, pursues and effectuates such intention." 1 *Wooddes. Lect.* 114. And Blackstone, in much fewer words, has explained equity to be "the sound interpretation of the law," and "the method of interpreting laws by the reason of them." 1 *Bl. Com.* 61. 3 *Id.* 431. And yet the same writer has clearly shown this to be an insufficient definition of equity as actually administered (distinct from law) in the courts. *Id.* 429—437. 1 *Story's Eq. Jur.* §§ 7—20.

**EQUITY.** A system of jurisprudence collateral to, and in some respects, independent of law, properly so called; the object of which is to render the administration of justice more complete, by affording relief where the courts of law are incompetent to give it, or to give it with effect; or by exercising certain branches of jurisdiction independently of them. This is equity in its proper modern sense; an elaborate system of rules and process, administered in many cases by distinct tribunals (termed courts of chancery) and with exclusive jurisdiction over certain subjects. It is "still distinguished by its original and animating principle, that no right should be without an adequate remedy," and its doctrines are founded upon the same basis of natural justice; but its action has become systematized, deprived of any loose and arbitrary character which might once have belonged to it, and as carefully regulated by fixed rules and precedents as the law itself. It is also no longer a mere principle or even system of interpretation, but a system of *practical remedy*, remarkably direct and thorough in its operation, from its close investigation of facts, and its precise adaptation of remedies. This quality is due perhaps to the peculiarity of its process, or mode of procedure, which is according to the course of the civil law, and is regarded by Blackstone as the chief characteristic of the whole system. 3 *Bl. Com.* 436. Equity, in this view, has become in many respects a distinct branch of jurisprudence and the exclusive jurisdiction it possesses over certain subjects, as trusts, infants and the specific performance of contracts, has tended to make it emphatically such. But in other important particulars it retains its original character of an auxiliary and even dependent system. Over certain important subjects, as fraud, accounts, mistake and accident, its jurisdiction is merely concurrent with that of the common law, and its essential dependence on the law is well expressed by the maxim, *æquitas sequitur legem*, (q. v.)

**Equity follows law.** 1 *Story's Eq. Jur.* § 64. Equity adopts and follows the rules of law in all cases to which those rules may, in terms, be applicable. Equity, in dealing with cases of an equitable nature, adopts and follows the analogies furnished by the rules of law. *Id. ibid.* A leading maxim of equity jurisprudence, which, however is not of universal application, but liable to many exceptions. *Id.* §§ 64—64 b. See *Æquitas sequitur legem*.

**Equity looks upon that as done which ought to have been done.** 1 *Story's Eq. Jur.* § 64 g. Equity will treat the subject matter, as to collateral consequences and incidents, in the same manner as if the final acts contemplated by the parties had been executed exactly as they ought to have been; not as the parties might have executed them. *Id. Ibid.*

**He who seeks equity must do equity.** 1 *Story's Eq. Jur.* § 64 e. He that will have equity done to him [by another,] must do it to the same person. *Francis' Max.* 1.

**He that hath committed iniquity shall not have equity.** *Francis' Max.* 5, max. 2.

**Where equity is equal, the law must prevail.** *Francis' Max.* 6, max. 14.

**EQUITY OF REDEMPTION.** The right which equity gives to a mortgagor, of redeeming his mortgaged estate after the appointed period has gone by, for repayment of the sum of money which was due on the mortgage. *Holthouse.* 2 *Bl. Com.* 158, 159. 1 *Steph. Com.* 284, 285. 4 *Kent's Com.* 158, 162. 2 *Crabb's Real Prop.* 898, § 2261, *et. seq.* It is a species of equitable estate, and is considered to be the real and beneficial estate, tantamount to the fee at law. 1 *Steph. Com.* 328. 4 *Kent's Com.* 159. In Pennsylvania it is a legal right. 11 *Serg. & R.* 223.

**EQUIVOCUM.** See *Æquivocum*.

**ERCISCERE.** Lat. To divide or partition. A very ancient word. Written also *Herciscere* (q. v.)

**ERCISCUNDUS.** Lat. In the civil law. To be divided. *Judicium familiæ erciscundæ*; a suit for the partition of an inheritance. *Inst.* 4. 17. 4. *Id.* 3, 28. 4. *Id.* 4. 6. 20. An ancient phrase derived from the Twelve Tables. *Calv. Lex. Jur.* See *Herciscunda*.

**ERER, Arer.** L. Fr. To plough. *Kelham.* See *Arer*.

**ERIACH.** In the Irish Brehon law, was a pecuniary satisfaction or recompense, (corresponding in some degree with the *weregild* of the Saxon law,) which a party guilty of murder was condemned to pay to the wife or child or friends of the deceased.\*  
4 *Bl. Com.* 313.

**ERIGIMUS.** Lat. We erect. One of the words by which a corporation may be created in England by the king's charter.  
1 *Bl. Com.* 473.

**ERRANT, Errant.** L. Fr. & Eng. [from Fr. *eirer, erer, error* ; to travel, to go about.] In English law. Itinerant; traveling about. A term formerly applied to justices, who went the circuit (otherwise called justices in eyre,) and to bailiffs at large. *Cowell. Britt.* fol. 1 b. See *Bailiffs errant, Eyre.*

**ERRATICUM.** L. Lat. In old law. A waif or stray ; a wandering beast. *Cowell.*

**ERRONICE.** L. Lat. In old practice. Erroneously ; through mistake. *Yelv.* 83.

**ERROR.** Lat. & Eng. [L. Fr. *erreur, erreur.*] In practice. A mistake in the foundation, proceedings, judgment or execution of a suit in a court of record, in matter of law or of fact ; and to correct which a writ of error lies.\* *Co. Litt.* 288 b.

**ERROR, Writ of.** [L. Lat. *breve de errore* ; L. Fr. *breve d'erreur.*] In practice. An original writ which lies after judgment in an action at law, in a court of record, to correct some supposed mistake in the proceedings or judgment of the court.\* 3 *Bl. Com.* 406. 2 *Tidd's Pr.* 1134, 1140. 1 *Arch. Pr.* 230. *Co. Litt.* 288 b. Sometimes simply termed *error*. It lies for some error or defect in substance, that is not aided, amendable or cured at common law, or by some of the statutes of amendments or jeofails ; and it lies to the same court in which the judgment was given, or to which the record was removed by writ of error, or to a superior court. 2 *Tidd's Pr.* 1136. In England, if a judgment in the Queen's Bench be erroneous in matter of *fact* only, and not in point of law, it may be reversed in the same court by writ of error *coram nobis*, and in the common pleas, the same writ is called a writ of error *coram vobis* ; the writ in these cases being merely in the nature of a commission to the judges to examine the error, without removing the record out of the court. *Id. ibid.* 1137, 1143. See *Coram nobis, Coram vobis.*

The same kind of writ, under the name of a *writ of error for error in fact*, is in use in such of the United States as follow the English practice. But the most usual and important species of writ of error is that which lies for error in *law*, and which removes the record to a superior court, in order to have the judgment reviewed. This writ is well described as consisting of two parts, a *certiorari* to remove the record, and a commission to examine it. 2 *Tidd's Pr.* 1134, 1143. 1 *Arch. Pr.* 229, 230. When the record, or a transcript of it has been removed to the superior court in compliance with the writ, the particular error complained of is brought before the court by means of pleadings and issue thereon ; and after argument on the points presented by the parties, if the court be of opinion that there is error in the judgment of the court below, it proceeds to reverse the judgment ; otherwise, the judgment is affirmed. See *U. S. Digest and Supplement, Error.*

**ERROR.** Lat. Error ; mistake. 1 *Mackeld. Civ. Law.* 163. See *Ignorantia.*

**Error juris necet.** Error of law injures. A mistake of the law has an injurious effect ; that is, the party committing it must suffer the consequences. 1 *Mackeld. Civ. Law*, 163, § 165, and notes. 1 *Story's Eq. Jur.* § 139, note.

**Error nominis nunquam necet, si de identitate rei constat.** A mistake in the name of a thing is never prejudicial, if it be clear as to the identity of the thing itself, [where the thing intended is certainly known.] 1 *Duer on Ins.* 171. This maxim is applicable only where the means of correcting the mistake are apparent on the face of the instrument to be construed. *Id. ibid.*

**Error qui non resistitur approbatur.** An error which is not resisted or opposed, is approved. *Doct. & Stud.* c. 40.

**Error sicutus nuda veritate in multis est probabilior ; et suspensum rationibus vincit veritatem error.** Error artfully disguised [or colored] is, in many instances, more probable than naked truth ; and frequently error overwhelms truth by [its show of] reasons. 2 *Co.* 73.

**Error scribentis necesse non debet.** The mistake of a writer [a clerical error] ought not to injure. *Jenk. Cent.* 325, case 42.

**Erroris ad sua principia referre, est refellere.** To refer errors to their sources is to refute them. 3 *Inst.* 15. To bring errors to their beginning is to see their last. *Id. ibid. in marg.*

**ERROUR.** L. Fr. [from Lat. *error*.] Error, mistake. *Britt.* c. 26.

**ESBRANCATURA.** L. Lat. [from Fr. *esbrancher*.] In old law. A cutting off the branches or boughs of trees. *Cowell. Spelman.*

**ESCA.** Lat. In old European law. Nuts of trees, or mast, used as the food of swine, deer and other animals. *Spelman. LL. Longobard.* lib. 1, tit. 23, l. 3; cited *ibid.*

**ESCÆTA.** L. Lat. In old English law. An escheat. *Reg. Orig.* 164 b. *Escætæ vulgo dicuntur quæ, decedentibus his qui de rege tenent in capite, cum non extat ratiōe sanguinis hæres, ad fiscum relabuntur;* those things are commonly called escheats, which, on the death of the king's tenants *in capite*, without heirs of blood, revert to the fisc, or treasury. *Lib. Nig. Scacc.* par. 2, c. 10, cited in *Spelman*, voc. *Eschæta*.

**ESCÆTOR.** L. Lat. In old English law. An escheator. *Reg. Orig.* 247, 256. See *Escheator*.

**ESCAMBIO, Breve de.** L. Lat. In old English law. A writ of exchange. A license in the shape of a writ, formerly granted to an English merchant to draw a bill of exchange on another in foreign parts, (*in partibus exteris*.) *Reg. Orig.* 194.

**ESCAMBIUM, Eschambium, Excambium.** L. Lat. In old English law. Exchange. See *Escambio, Excambium*.

Recompense in value. Anciently, when land was recovered of a tenant, as in an action of dower, and the tenant had vouched another to warranty, he was allowed out of the vouchee's land enough to make up for what he had lost, which was called *escambium ad valentiam*; (Fr. *eschaunge a la vaillaunce*.) *Bract.* fol. 27, 296 b, 301, 387 b. *Britt.* c. 75, 105.

**ESCAPE.** [L. Lat. *escapium, escapium*, from L. Fr. *eschaper, escapper*; Lat. *effugere*, to fly from.] In practice. A violent or privy evasion out of some lawful restraint. *Cowell.* — The gaining one's liberty after being arrested or imprisoned, before being delivered by course of law. 4 *Steph. Com.* 254. *Termes de la ley*.

Any liberty given to a prisoner not authorized by law. 5 *Mass. R.* 310.

An escape from arrest under civil process is either *negligent* or *voluntary*; *neg-*

*ligent*, where the party escapes, without the knowledge or consent of the sheriff or his officer; *voluntary*, where the sheriff or his officer permits him to go at large. 3 *Bl. Com.* 415. 1 *Archb. Pr.* 85. *Sewell's Sheriff*, 441. If a defendant, having been once taken in execution, be afterwards seen at large for any, the shortest time, even before the return of the writ, it is an *escape*, unless it be by consent of the plaintiff himself, given previously to, or at the time of the discharge, founded on a good consideration, or under the authority of a writ of *habeas corpus ad testificandum*, or where the defendant has been discharged under an insolvent act. 8 *Johnson's R.* 472. 10 *Id.* 220. 16 *Id.* 181. 18 *Id.* 48. 1 *Salk.* 271. 1 *Show.* 174. 3 *Wendell's R.* 184. 1 *Burr. Pr.* 312. *U. S. Digest & Supplement*, *Escape*.

The escape of a person lawfully arrested for crime is itself a crime punishable by fine and imprisonment. 4 *Steph. Com.* 254. See *Wharton's Am. Crim. Law*, 551. *Lewis' U. S. Crim. Law*, 241, *et seq.*

**ESCAPE WARRANT.** In English practice. A warrant granted by statutes 1 Ann. c. 6, and 5 Ann. c. 9, to retake a prisoner who has escaped from custody on execution, or mesne process. It is issued on an affidavit of the escape, made before a judge of the court in which the action was brought, and is directed to all sheriffs, &c., throughout England, commanding them to retake the prisoner, and to commit him to gaol where taken, there to remain until the debt is satisfied. *Tomlins. Jacob.*

**ESCAPIUM, Escapia.** L. Lat. In old English law. An escape. *Reg. Orig.* 312. A chance, or accident. *Cowell.* See *Escapium*.

**ESCHÆTA, Eschæta.** L. Lat. In old English law. An escheat. *Spelman. Bract.* fol. 30. See *Escheat*.

The falling of a material object, as a tree; the appendages of a tree felled or cut down. *Cart. ex Reg. Eccl. Norwic.* cited in *Cowell.* See *Escheat*.

**ESCHÆTOR, Escætor.** L. Lat. An escheator. *Spelman.* See *Escheator*.

**ESCHAMBIUM.** L. Lat. Exchange. *Bract.* fol. 322 b. Another form of *Escambium*, (q. v.)

**ESCHANGE, Eschaunge.** L. Fr. Exchange. A title in the old abridgments of Fitzherbert, Brooke, and Viner.

**En échange il convient que les estates soient égales.** In an exchange it behooves that the estates should be equal. *Litt.* sect. 64. *Co. Litt.* 50 b. That is, equal as to the quantity of interest. *Id. ibid.* 2 *Hilliard's Real Prop.* 298.

**ESCHAPER.** L. Fr. To escape. *Et si le prisonnier que avera eschape, soit eschape hors de la garde*; and if the prisoner who shall have escaped be escaped out of the custody. *Britt.* c. 11. See *Id.* c. 21.

**ESCHAPIUM.** L. Lat. Chance, hap, or accident; a casual opportunity. *Bract.* fol. 230. *Cowell*, voc. *Escapum*.

**ESCHAUDE.** L. Fr. Smothered. *Kelham*. Famished, choked. *L. Fr. Dict.* But *quære*.

**ESCHAUNGE.** L. Fr. Exchange. *Britt.* c. 54. *Eschaunges a la vaillaunce*; exchanges to the value. *Id.* c. 75.

**ESCHEAT.** [L. Fr. *eschete*, *eschet*, from *eschier*, *eschoir*, to fall or happen; L. Lat. *eschata*, *eschata*. A falling or happening.] In feudal and English law. The falling (falling back or reverting) of lands, by accident or chance, to the lord of whom they are holden, in consequence of the extinction of the blood of the tenant, either by his dying without heirs, (*propter defectum sanguinis*), or by his attainder for treason or felony, (*propter delictum tenentis*).<sup>\*</sup> *Co. Litt.* 13 a, 92 b. 2 *Bl. Com.* 72, 73. *Id.* 244, 245. 1 *Steph. Com.* 401, 402, 414. 1 *Crabb's Real Prop.* 638, § 818. 2 *Id.* 1028, § 2411. Mr. Stephen distinguishes between *eschate* properly so called, and *forfeiture*; the former being the effect of the death of the tenant without heirs, the latter of his violation of his duty to his lord. 1 *Steph. Com.* 166. A distinction is also made in the case of attainder between *eschate* to the lord of the fee, and *forfeiture* to the crown. *Id.* 409. See *Forfeiture*. But both words seem to have been used indifferently to signify the same thing, from a very early period. *Britt.* c. 18. See *Escata*, *Eschete*.

The land or fee itself, which thus fell back to the lord. *Spelman*, voc. *Eschata*. Such lands were called *excadentia*, or *terra excadentiales*. *Fleta*, lib. 6, c. 1. *Co. Litt.* 13 a.

Any profits that fell to the lord on the tenant's death, without heirs. Called by the civilians *caduca*, (q. v.) *Co. Litt.* 13 a.

*Escheat* is applied in old records to material substances that fell to the ground.

Thus the *escheat of wood*, signified all the appendages of lop and top, &c., that belonged to a tree *felled* or cut down. John de Grey, Bishop of Norwich, gave liberty to the monks of his church that in his wood of Thorp they should have one tree with the branches, bark, loppings, root, and all the *escheat*, (*tota eschata*.) *Cowell*.

**ESCHEAT.** In American law. The reverting of land to the state, on the death of the owner without lawful heirs.<sup>\*</sup> 4 *Kent's Com.* 423, 424. See *Forfeiture*. See *U. S. Dig. & Supplement*, *Escheat*.

To **ESCHEAT.** [L. Fr. *eschier*; L. Lat. *cadere*, *excidere*, *accidere*, to fall or happen.] To fall back, (Lat. *relabi*;) to revert, return or become forfeited to the lord, the crown, or the state; as lands do in certain cases.<sup>\*</sup> See *Escheat*. "When, by accident, lands fall to the lord of whom they are holden,—we say the fee is *escheated*." *Co. Litt.* 13 a. It is a general principle in American law that when the title to land fails from defect of heirs or devisees, it necessarily reverts or *escheats* to the people, as forming part of the common stock to which the whole community is entitled. 4 *Kent's Com.* 424.

**ESCHEAT, Writ of.** [L. Lat. *breve de eschata*; L. Fr. *briefe d'eschete*.] A writ which anciently lay for a lord, to recover possession of lands that had *escheated* to him. *Reg. Orig.* 164 b. *F. N. B.* 143, 144. *Termes de la ley*. 2 *Bl. Com.* 245. 3 *Id.* 194. Now abolished. 1 *Steph. Com.* 401, note.

**ESCHEATOR.** [L. Lat. *eschator*; L. Fr. *eschetor*, *eschetour*.] An ancient officer, appointed by the lord treasurer in every county in England, to look after the *escheats* which fell due to the king in his particular county. It was his duty to make inquests of titles by *escheats*, by the oaths of good and lawful men of the county impannelled by the sheriff, and to certify their inquisitions into the exchequer. *Co. Litt.* 13 b, 92 b. 4 *Inst.* 225. *Reg. Orig.* 247, 252, 254. *F. N. B.* 100, C. D. *Tomlins. Crabb's Hist.* 469.

**ESCHEATOR.** In American law. An officer appointed to take charge of *escheated* estates, sometimes termed *eschetor* general. *Purdon's (Pa.) Digest*, 342. *Rev. Code of Mississippi*, 1824. 4 *Kent's Com.* 425, note.

**ESCHEKER.** L. Fr. Exchequer. *En-*

*voyes a nostre eschequer*; sent to our exchequer. *Britt. c. 26.*

ESCHEQUER. L. Fr. Exchequer. *Artic. sup. Chart. c. 4.*

ESCHETE. L. Fr. [from *eschier*, q. v.] Escheat; an escheat. *De eschetes que nous duissent eschier par la felonie des felons*; of escheats which ought to fall to us by the felony of felons. *Britt. c. 18.*

ESCHIER, *Eschire*. L. Fr. To fall or happen; to fall to; to descend; to escheat. *Britt. c. 18.* See *Eschete*. *Heritage que eschire lour purra*; inheritance which may fall to them. *Britt. c. 5.*

ESCHUER, *Eschure*, *Eschever*. L. Fr. To shun or avoid; to eschew. *Kelham*. *Pur eschuer grand delays*. *Reg. Orig. 19 b, nota*. *Pur eschure la perilouse aventure de batailles*; for avoiding the perilous chance of battle. *Britt. c. 25.*

ESCLAUNDER. L. Fr. False accusation; calumny; slander. *Britt. c. 22.*

ESCOCE. L. Fr. Scotland. *Britt. c. 16.*

ESCOTER. L. Fr. To pay. *Stat. Westm. 1, c. 18.*

ESCRIE. L. Fr. Notorious; proclaimed, publicly declared. *Felons escries*; notorious felons. *Stat. Westm. 1, c. 12.*

ESCRIT, *Escrit*. L. Fr. Writing; a writing; a written instrument. *Mettre en escrit*; to put in writing. *Britt. fol. 1.* *En escrit, issint que lescript soit endente*; in writing, so that the writing be indented. *Id. c. 2.* *Par escrit de une parte*. *Id. c. 51.* *Soit lour verdit mys en escrit*; their verdict shall be put in writing. *Id. c. 58.* *Par titre de escrit*. *Id. c. 66.* See *Best on Evid. 240, § 198, note.*

ESCROW, *Escrowe*, *Escrovet*. L. Fr. & Eng. A scroll, (scrowl, scrole) or writing; (Lat. *scriptum*, *schedula*); a mere writing, as distinguished from a perfect deed.\* *Britt. c. 71.* *Litt. sect. 246.* A deed, (and the term includes a *bond*), delivered to a third person to hold or keep, until some act is done or condition performed, and then to be delivered to the grantee or obligee, when it takes effect, and becomes a deed to all intents and purposes.\* *2 Bl. Com. 307.* *Co. Litt. 36.* *Termes de la ley. 1 Steph. Com. 459, note (k) and cases ibid. 4 Kent's Com. 454.* *Hob. 246.* *5 Cranch's*

*R. 351.* Until the condition be performed, and the deed delivered over, the estate does not pass, but remains in the grantor. *4 Kent's Com. 454.* Generally an *escrow* takes effect from the second delivery, and is to be considered the deed of the party from that time. In cases, however, where it becomes necessary for the purposes of justice, there is a relation back to the first delivery, so as to give the deed effect from that time. *Id. ibid.* *Smith on Contracts, 10, 11 and note.*

*Escrowe* occurs in very nearly its modern form in the law French of Britton, but in Littleton's time was written *escrovet*; both words being used by these authors in describing the manner of partitioning an inheritance among co-parceners. Thus Britton observes, that after partition made, "the parcels should be entered and specified in several scrolls or *escrows* (*en plusurs escrowes*), and these *escrowes* should be delivered to a layman who knows nothing of letters, and he shall deliver to each parceller an *escrow* (*un escrowe*). And according to the lot of the *escrows*, (that is, according as they happen to be thus distributed) each parceller shall hold for her share." *Britt. c. 71.* Littleton describes the mode of drawing the lots thus: "After the partition of the lands made, each part of the land shall be written alone by itself in a little scroll (*en un petit escrovet*) and shall be covered all over in wax, in the manner of a little ball, (*d'un petit pile*), so that no one can see the scroll, and then the four balls of wax shall be put into a hat to be kept in the hands of an indifferent man," and then the eldest daughter drew first, &c. *Litt. sect. 246.* *Escrowe* seems properly to mean something more than a mere writing (that being denoted by the Fr. *escript*, which however *escrovet* somewhat resembles.) The radical idea appears to be, a writing the contents of which are temporarily kept out of view, as by being put in a third hand, by rolling up, enclosing in wax, &c. It will be seen from the foregoing extracts that the distinctive modern feature of an *escrow*, viz. its being held in the hands of a third person, has belonged to it from the earliest times.

ESCU. L. Fr. [from Lat. *scutum*.] A shield or buckler. *Un escu de iiii corners*; a square buckler used in the trial by battle. *Britt. c. 22.*

ESCUAGE. L. Fr. [from *escu*, a shield; L. Lat. *scutagium*, q. v.] In old English law. A species of military or

knight-service; (service of the shield;) or rather an incident to the tenure by knight-service. *Litt.* sect. 95. *Co. Litt.* 68 b.

A pecuniary payment made as a compensation or commutation for actual service. Otherwise called *scutage*, (q. v.) 2 *Bl. Com.* 74, 80.

ESEE. L. Fr. Easy. *Meyns* esee *que devaunt*; less easy than before. *Britt.* c. 54. *Esement*; easily. *Id.* c. 61. An easement. *Kelham.*

ESKIPPAMENTUM. L. Lat. In old English law. Tackle or furniture of ships; skippage. *Claus. 1 Edw. I.* cited in *Cowell.*

ESKIPPARE. L. Lat. In old English law. To ship. *Towns. Pl.* 223. *Rast. Entr.* 409.

ESKIPPER, *Eskepper, Eseepper.* L. Fr. To ship. *L. Fr. Dict. Kelham.*

ESKIPPESON. L. Fr. [from *eskipper*. q. v.] Shipping or passage by sea. *Cowell.*

ESLIER. L. Fr. To choose. *Litt.* sect. 58.

*Esliens, eslus*; chosen. *Stat. Westm.* 1, c. 10. *Britt.* fol. 2. *Id.* c. 1.

ESLISORS. [from Fr. *eslier*, q. v.] Electors, or choosers. More commonly written *elisors*, (q. v.)

ESLOIGNER. L. Fr. To remove or eloign, (q. v.)  
To put off or adjourn. *Kelham.*

ESNECY. [L. Fr. *aisnesse*; L. Lat. *asneicia, esmetia, enitia pars, dignitas primogeniti.*] In old English law. The privilege of the eldest. A privilege or prerogative granted to the eldest among coparceners, to have the first choice after the inheritance was divided. *Fleta*, lib. 5, c. 9. *Litt.* sect. 244, 245. *Co. Litt.* 166 b.

ESPEALTARE. L. Lat. In old English law. To expedite or disable dogs. *Cowell.* See *Expeditate.*

ESPLEES. L. Fr. & Eng. [L. Lat. *expletia*, from *explere*, to fill up.] In old practice. Full profits of land. The full profits or products which ground or land yields, as the hay of the meadows, the feed of the pasture, the corn and grain of the arable; the rents, services and such like issues. *Cowell. Blount.* An essential word in writs of right. See *Expletia.*

The lands themselves, from which such profits are derived. *Ducange.*

ESPOUSALS. [L. Fr. *esposailles*; Lat. *sponsalia.*] The contract, or mutual promise between a man and a woman, to marry each other. *Wood's Inst.* 57.

The ceremony of betrothing.

ESQUIRE, *Esquier.* [L. Fr. *escuier*, from *escu*, a shield; L. Lat. *scutifer, armiger.*] A knight's attendant, who waited on him in time of war, and bore his shield, or armor. *Spelman, voc. Armiger.*

A name or title of dignity in English law next above gentleman, and below knight. Also, a title of office given to sheriffs, serjeants and barristers at law, justices of the peace, and others. 1 *Bl. Com.* 406. 3 *Chitt. Bl. Com.* 28, note. 3 *Steph. Com.* 15, note. *Tomlins.* Esquires are first mentioned in the statutes 1 Ric. II. st. 2, c. 7, and 16 Ric. II. c. 4. 3 *Reeves' Hist. Eng. Law*, 172. See *Armiger.*

ESSART. [L. Lat. *essartum, esartum, exartum.*] Woodland turned into tillage, by uprooting the trees, and removing the underwood. *Spelman, voc. Essartum.* Commonly written *assart*, (q. v.)

ESSARTER. L. Fr. To cut down woods, to clear land of trees and underwood; properly to thin woods, by cutting trees, &c. at intervals. *Spelman voc. Esartum.*

ESSE. Lat. [infinitive of *sum*, I am.] To be; being. Although a verb, this word is often used in law Latin as a substantive, and governed by a preposition; as in the phrases *ad esse, de esse, in esse*, &c. See *De bene esse, In esse.*

ESSENDUM, ESSENDI. L. Lat. Being; of being. A barbarous gerund formed from the verb *sum, esse*, to be. See *infra.*

ESSENDI, (or DE ESSENDO) QUI-ETUM DE THEOLONIO, *Breve.* L. Lat. In old English law. A writ of being quit of toll. A writ which anciently lay for citizens and burgesses of a city or town, which by charter or prescription was entitled to exemption from toll, where toll was exacted of them. *Reg. Orig.* 258 b. *F. N. B.* 226, I.

ESSOIN, *Essoign.* [L. Fr. *essoine, essoigne, ezoine, asoigne, assoigne*; L. Lat. *essonium, exonium*, from Fr. *essonier*, (which from *ex*, priv. and *soign*, care), to excuse,



to relieve from care; or from Gr. *ἰξήνυσθαι*, to excuse on oath; (from *ἰξ*, from, and *ἔνυμι*, to swear.) *Spelman*.] In English practice. An excuse for not appearing in court, at the return of process; the exhibition or presentation of such excuse to the court; (*ipsa excusatio, ejusdemque exhibitio.*) *Spelman* voc. *Essoniare*. *Britt.* c. 122. *Roscoe's Real Act.* 156. Formerly allowed both to the plaintiff and defendant, (though generally the latter,) in real, personal and mixed actions. *Co. Litt.* 131. *Com. Dig.* Exoine, B. I. *Boote's Suit at Law*, 56, 57. *Gilb. C. Pleas*, 12, 13.

The excuses or essoins which were allowed to be offered were five, viz.: that the party was (1) in the king's service, (Lat. *in servitio regis*; Fr. *en service del roy*; called simply *servitium regis*;) (2) in the holy land; (Lat. *in terra sancta*, or *in terram sanctam*; called simply *terra sancta*; Fr. *a la terre seynle*;) (3) beyond sea, (Lat. *trans* or *ultra mare*, Fr. *oultre meer*, or *ouster le mer*;) (4) ill in bed; (called *malum lecti*; Fr. *mal de lyt*; illness in bed;) and (5) prevented by misfortune happening on the way to the court, (called *malum viæ*; Fr. *mal de venue*;) which last was the common essoin. Hence the technical names of the essoins; (1) *De servitio regis*, or *de service del roy*; (2) *De terra sancta*, or *de terre seynle*; (3) *De ultra mare*, or *de oultre meer*; (4) *De malo lecti*, or *de mal de lyt*; and (5) *De malo veniendi* or *de mal de venue*, (qq. v.) *Glanv.* lib. 1. *Bract.* lib. 5, tr. 2. *Britt.* cc. 122—125. 1 *Reeves' Hist.* 405, et. seq. 2 *Id.* 122, 303. All these, except the last, have long been obsolete, and no essoin is now allowed in personal actions. *Roscoe's Real Act.* 163. 2 *Term R.* 16. 16 *East's R.* 7 note (a). In real actions, essoins are still allowed in England. 3 *Steph. Com.* 659. See 10 *Bing.* 65.

To ESSOIN. [L. Fr. *essoigner*, *essonnier*; L. Lat. *essoniare*.] In English practice. To present or offer an excuse for not appearing in court on an appointed day, in obedience to a summons; to cast an essoin. *Spelman*, voc. *Essoniare*. This was anciently done by a person whom the party sent for that purpose, called an essoiner, (*essoniator*;) and who, according to Bracton, presented the excuse in this form: *Essonio talem dominum meum, quod cum esset in veniendo versus curiam, talis infirmitas accedit ei per viam, quod venire non potest pro lucrari, nec pro perdere; et hoc paratus sum docere, sicut curia consideraverit, &c.* I essoin such a one, my master, that while he was coming towards the court, such an

infirmity happened to him by the way, that he cannot come, either to gain or lose; and this I am ready to show, or prove, as the court shall consider, &c. *Bract.* fol. 340.

ESSOIN DAY. In English practice. Formerly the first general return day of the term, on which the courts sat to receive essoins, i. e. excuses for parties who did not appear in court, according to the summons of writs. 3 *Bl. Com.* 278. *Boote's Suit at Law*, 57. *Gilb. C. Pleas*, 13. 1 *Tidd's Pr.* 107. But, by statutes 11 Geo. IV. and 1 Will. IV. c. 70, § 6, these days were done away with, as a part of the term. *Tomlins. Wharton's Lex.*

ESSOIN ROLL. In English practice. A roll upon which essoins were formerly entered, together with the day to which they were adjourned. *Boote's Suit at Law*, 57. *Roscoe's Real Act.* 162, 163. *Gilb. C. Pleas*, 13. *Co. Entr.* 266 a.

ESSONEOUR. L. Fr. An essoigner; an excuser, (*excusour*.) *Britt.* c. 122.

ESSONIARE. L. Lat. In old English practice. To essoin; to present an excuse or essoin to a court. *Spelman.* *Bract.* fol. 340, et seq.

*Essoniator*; an essoiner; a person sent to essoin another, or present an excuse for him; an excuser, (*excusator*.) *Bract.* fol. 337 b. 1 *Reeves' Hist.* 116, 118.

*Essoniatus*; a person essoined, or for whom an essoin was presented. *Glanv.* lib. 1, c. 25. *Bract.* fol. 343 b.

ESSONIO. L. Lat. (I essoin.) In old English practice. The commencement of the old formula of essoining. *Bract.* fol. 343 b. See *To Essoin*.

ESSONIUM, *Exonium*, *Exonia*, *Sonium*. L. Lat. In old English law and practice. An essoin; an excuse for not appearing in court. *Spelman.* *Bract.* lib. 5, tract. 2, *De Essoniis*. 2 *Inst.* 125. See *Essoin*.

An excuse or reason, in general. *Spelman*.

EST. Lat. [from *sum*, *esse*, to be.] Is; it is; there is. *Est aliquid quod non oportet, etiam si licet; quicquid vero non licet certe non oportet.* There is something [are some things] which ought not to be done, even though it be lawful; but whatever is not lawful certainly ought not to be done. *Hob.* 159.

**Est imperium legistorum tanquam viva vox; rebus et non verbis legem imponimus.** [The voice, utterance or declaration] of legislators themselves is like the living voice, [the spoken word of an individual;] we impose law upon things, not upon words. 10 Co. 101 b. Statutes are to be interpreted, like ordinary language, with reference rather to substantial effect than mere verbal nicety.

**EST.** L. Fr. [from *estre*, to be.] Is; it is; there is. *Britt. passim.*

**EST ASCAVOIR.** L. Fr. [Lat. *sciendum est*.] It is to be understood or known; "it is to wit." *Litt.* sect. 9, 45, 46, 57, 59. A very common expression in Littleton, especially at the commencement of a section; and according to Lord Coke, "it ever teacheth us some rule of law, or general or sure leading point." *Co. Litt.* 16. It seems to be directly derived from the *sciendum est* (q. v.) of the civil law.

**ESTABLIR.** L. Fr. [Lat. *constituere*.] In old English law. To establish or ordain as a law. *Establie est*; it is ordained. *Stat. Gloc.* c. 7.

To fix or settle, as dower. *Estably*; fixed or settled. *Britt.* c. 102.

**ESTABLISSEMENT.** L. Fr. [from *establi*, q. v.] An establishment or ordinance; an act or statute. *Ceux sont les établissements le Roy Edward*; these are the establishments (acts or ordinances) of King Edward. *Stat. Westm.* 1, pr. *L'establissement de nostre estatute.* *Britt.* c. 21.

The settlement of dower on a woman by her husband. *Britt.* c. 102, *De establissements de dower.*

**ESTANDARD.** L. Fr. A standard (of weights and measures.) So called, because it stands constant and immoveable, and hath all other measures coming towards it for their conformity. *Termes de la ley.* *Estandars*; standards. *Britt.* fol. 2. *Id.* c. 30.

**ESTATE.** L. Fr. & Eng. [from Lat. *status*, state or condition, from *stare*, to stand.] The interest which any one has in lands, or in any other subject of property. 1 *Preston on Estates*, 20. An estate in lands, tenements, and hereditaments signifies such interest as the tenant has therein. 2 *Bl. Com.* 103.—The condition or circumstance in which the owner stands with regard to his property. *Id. ibid.* 2 *Crabb's Real Prop.* 2, § 942. In this sense, *estate* is constantly used in conveyances in connexion with the words *right*, *title* and *into*

*rest*, (qq. v.) and is, in a great degree, synonymous with all of them. See *Co. Litt.* 345.

The property itself, in which one has an interest; technically called the *corpus*. Thus, lands are real estate; goods and chattels are personal estate. See *Real estate*, *Personal estate*.

The old definitions of this word generally confine it to lands or realty. Thus, according to Lord Coke, "*state or estate* significeth such inheritance, freehold, term for years, &c., as any man hath in *lands* or tenements." *Co. Litt.* 345 a. So Cowell defines it to be "that title or interest which a man hath in *lands* or tenements," and the same definition is given in the *Termes de la ley*. And this limited sense of the word has been relied on in argument in some modern cases. But, according to the settled modern doctrine, the term *estate* is of much more extensive import and application, being indeed *genus generalissimum*, and clearly comprehending things personal as well as real; personal as well as real estate. Holt, C. J., 1 *Salk.* 237. *Ward on Legacies*, 208. Marshall, C. J., 1 *Peters' R.* 583, 588. Paterson, J., 3 *Cranch's R.* 97. Dewey, J., 4 *Metcalf's R.* 178, 180. Hence it is well remarked, that, in general, whenever legal enactments are intended to apply exclusively to one or the other of these different species of property, the statutes use the proper qualifying words, "personal" or "real estate," as the case may require. Dewey, J., *ub. sup.*

In wills, the import of the term *estate* depends in a great degree upon its association with other expressions. 2 *Powell on Dev.* (by Jarman,) 158, chap. x. Marshall, C. J., 1 *Peters' R.* 585, 588. Thus, in a very recent case in England, it was held that the word *estate* in a will did not, of necessity, include *real* property, but its meaning must be taken as explained by the context. Accordingly, where a testator after devising certain real estates by his will, proceeded, "I give all the rest of my household furniture, books, linen and china, except as hereinafter mentioned, goods, chattels, *estate* and effects of whatever nature or kind soever, and wheresoever the same shall be at the time of my death," unto certain executors in trust to dispose of the same as specified by the will, it was held that the word "*estate*" did not pass real estate. 1 *Welsby, H. & Gordon*, 141. See 1 *Jarman on Wills*, 658, (566, Perkins' ed. notes.) But, subject to qualification and restriction, the term *estate* is the most general, significant and operative word

that can be used in a will, and, according to all the cases, may embrace every degree and species of interest. Paterson, J., 3 *Cranch's R.* 97. If used as descriptive of land, it will carry every thing, both the land and the interest in it, unless it be restrained by particular expressions. *Id. ibid.* It will carry the inheritance, though it be accompanied by words descriptive of local position, or other expressions referable exclusively to the *corpus* of the land. 2 *Powell on Dev.* (by Jarman.) 411, 412, and cases cited *ibid.* 1 *Hilliard's Real Prop.* 614. Marshall, C. J., 1 *Peters' R.* 588. 2 *Jarman on Wills*, 181, (132, Perkins' ed. notes,) *et seq.*

**ESTATE OF INHERITANCE.** A species of freehold estate in lands, otherwise called a *fee*, where the tenant is not only entitled to enjoy the land for his own life, but where, after his death, it is cast by the law upon the persons who successively represent him *in perpetuum*, in right of blood, according to a certain established order of descent. 1 *Steph. Com.* 218. *Litt.* sect. 1. *Co. Litt.* 237 b. 1 *N. Y. Rev. Stat.* [722], 717, § 2.

**ESTATE IN FEE SIMPLE.** A species of estate of inheritance which a man has, to hold to him and his heirs general, that is, his heirs whether lineal or collateral, male or female; and which is often called an *estate in fee*, without the addition of the word *simple*. 1 *Steph. Com.* 220. 2 *Crabb's Real Prop.* 6. — The entire and absolute interest and property in land. *Cruise Dig.* tit. i. sect. 44. See *Fee, Fee simple*.

**ESTATE IN FEE TAIL, generally termed an ESTATE TAIL.** An estate of inheritance which a man has, to hold to him and the heirs of his body, or to him and particular heirs of his body. 1 *Steph. Com.* 228. — An estate of inheritance by force of the statute *De Donis*, limited and restrained to some particular heirs of the donee, in exclusion of others. 2 *Crabb's Real Prop.* 22, 23, § 971. *Cruise Dig.* tit. ii. ch. 1, sect. 12. See *Tail, Fee Tail*.

**ESTATE FOR LIFE.** A freehold estate, not of inheritance, which a man has, to hold for the term of his own life, or for that of any other person, or for more lives than one.\* 1 *Steph. Com.* 239. — A freehold interest in lands, the duration of which is confined to the life or lives of some particular person or persons, or to the happening or not happening of some uncertain event. *Cruise Dig.* tit. iii. ch. 1, sect. 1.

1 *Hilliard's Real Prop.* 99. — That interest in lands which may possibly last for a life, but cannot last longer. 2 *Crabb's Real Prop.* 59, § 1020. When it is an estate for a man's own life, it is called absolutely an *estate for life*, but when it is for another's life it is called an estate *pur autre vie*. *Id. Litt.* sect. 56. See 4 *Kent's Com.* 23, 24.

**ESTATE BY THE CURTESY.** A species of life estate to which a man is by law entitled, on the death of his wife, in the lands or tenements of which she was seised in fee during the marriage, provided he had issue by her, born alive, and capable of inheriting her estate.\* 1 *Steph. Com.* 246. 2 *Bl. Com.* 126. *Cruise Dig.* tit. v. 2 *Crabb's Real Prop.* 97, § 1074. 1 *Hilliard's Real Prop.* 110. See 4 *Kent's Com.* 27. See *Curtesy*.

**ESTATE IN DOWER.** A species of life estate which a woman is, by law, entitled to claim on the death of her husband, in the lands and tenements of which he was seised in fee during the marriage, and which her issue, if any, might by possibility have inherited. 1 *Steph. Com.* 249. 2 *Bl. Com.* 129. *Cruise Dig.* tit. vi. 2 *Crabb's Real Prop.* 124, § 1117. 4 *Kent's Com.* 35. See *Dower*.

In several of the United States, (Vermont, New-Hampshire, Connecticut, Tennessee, North Carolina, and Georgia,) the title to dower has been reduced down to the lands whereof the husband *died seised*. 4 *Kent's Com.* 41. 1 *Greenleaf's Cruise Dig.* 165, note. 1 *Hilliard's Real Prop.* 125. In England, by the late Dower Act, 3 & 4 Will. IV. c. 105, seisin of the husband is not necessary. 2 *Crabb's Real Prop.* 130.

**ESTATE PUR AUTRE VIE.** Estate for another's life. An estate in lands which a man holds for the life of another person. 2 *Bl. Com.* 120. *Litt.* sect. 56.

**ESTATE FOR YEARS.** A species of estate less than freehold, where a man has an interest in lands and tenements, and a possession thereof, by virtue of such interest, for some fixed and determinate period of time; as in the case where lands are let for the term of a certain number of years, agreed upon between the lessor and the lessee, and the lessee enters thereon. 1 *Steph. Com.* 263, 264. Blackstone calls this estate a *contract* for the possession of lands or tenements for some determinate period. 2 *Bl. Com.* 140. See 2 *Crabb's*

*Real Prop.* 224, § 1267. 1 *Hilliard's Real Prop.* 198. 4 *Kent's Com.* 85. It is frequently called a *term*, (*terminus*), because its duration or continuance is bounded, limited and determined. 2 *Bl. Com.* 143.

**ESTATE AT WILL.** A species of estate less than freehold, where lands and tenements are let by one man to another, to have and to hold at the will of the lessor; and the tenant by force of this lease obtains possession. 2 *Bl. Com.* 145. 4 *Kent's Com.* 110. *Litt.* sect. 68. Or it is where lands are let without limiting any certain and determinate estate. *Id.* 2 *Crabb's Real Prop.* 403, § 1543. *Cruise Dig.* tit. ix. ch. 1.

**ESTATE AT (or BY) SUFFERANCE,** is where one comes into possession of land under a lawful demise, and after his estate is ended, wrongfully continues the possession. 1 *Steph. Com.* 273. *Co. Litt.* 57 b. 2 *Bl. Com.* 150. *Cruise Dig.* tit. ix. ch. 2. 2 *Crabb's Real Prop.* 437, § 1597. See 4 *Kent's Com.* 116.

**ESTATE UPON CONDITION.** An estate in lands, the existence of which depends upon the happening or not happening of some uncertain event, whereby the estate may be either originally created, or enlarged, or finally defeated. 2 *Bl. Com.* 151. 1 *Steph. Com.* 276. *Co. Litt.* 201 a. *Litt.* sect. 323, 325. *Cruise Dig.* tit. xiii. — An estate having a qualification annexed to it, by which it may, upon the happening of a particular event, be created or enlarged or destroyed. 4 *Kent's Com.* 121.

**ESTATE UPON CONDITION IMPLIED, (or CONDITION IN LAW.)** An estate having a condition annexed to it inseparably from its essence and constitution, although no condition be expressed in words. 2 *Bl. Com.* 152. 4 *Kent's Com.* 121. See *Condition implied*.

**ESTATE UPON CONDITION EXPRESSED.** An estate granted, either in fee simple or otherwise, with an express qualification annexed, whereby the estate granted shall either commence, be enlarged, or be defeated, upon performance or breach of such qualification, or condition. 2 *Bl. Com.* 154. See *Condition expressed*.

An estate which is so expressly defined and limited by the words of its creation, that it cannot endure for any longer time than till the contingency happens, upon which the estate is to fail. 1 *Steph. Com.* 278.

**ESTATE IN VADIO.** An estate in gage, or pledge. 2 *Bl. Com.* 157. 1 *Steph. Com.* 282. See *Mortgage*.

**ESTATE BY STATUTE MERCHANT.** See *Statute merchant*.

**ESTATE BY ELEGIT.** See *Elegit*.

**ESTATE IN POSSESSION.** An estate whereby a present interest passes to, and resides in the tenant, not depending on any subsequent circumstance, or contingency. 2 *Bl. Com.* 163. An estate where the tenant is in actual pernanacy, or receipt of the rents and other advantages arising therefrom. *Id. ibid.* 2 *Crabb's Real Prop.* 958, § 2322. *Cruise Dig.* tit. xvi. ch. 1, sect. 1. Where a man is entitled immediately to the possession of land, his estate is said to be in possession; when entitled to it, not immediately but *in futuro*, his estate is said to be in expectancy. 1 *Steph. Com.* 289. 1 *N. Y. Rev. St.* [723], 718, § 8.

**ESTATE IN EXPECTANCY.** An estate where the right to the pernanacy of the profits is postponed to some future period. *Cruise Dig.* tit. xvi. chap. 1. sect. 1.

**ESTATE IN REVERSION.** A species of estate in expectancy, created by operation of law, being the residue of an estate left in the grantor, to commence in possession after the determination of some particular estate granted out by him. 2 *Bl. Com.* 175. 2 *Crabb's Real Prop.* 978, § 2345. — The residue of an estate left in the grantor or his heirs, or in the heirs of a testator, commencing in possession on the determination of a particular estate granted or devised. 1 *N. Y. Rev. Stat.* [723], 718, § 12. — An estate in reversion is where any estate is derived, by grant or otherwise, out of a larger one, leaving in the original owner an ulterior estate immediately expectant on that which is so derived: the latter interest being called the *particular* estate, (as being only a small part or *particula* of the original one,) and the ulterior interest, the *reversion*. 1 *Steph. Com.* 290. See *Reversion*.

**ESTATE IN REMAINDER.** An estate limited to take effect, and be enjoyed, after another estate is determined. 2 *Bl. Com.* 163. *Cruise Dig.* tit. xvi. ch. 1. sect. 2. 2 *Crabb's Real Prop.* 959, § 2323. An estate in remainder is where any estate is derived by grant out of a larger one, an ulterior estate immediately expectant on that which is so derived being at the same

time granted away by the original owner. The latter interest is called the particular estate, and the ulterior one, the remainder. 1 *Steph. Com.* 295. See *Remainder*.

**ESTATE IN SEVERALTY.** An estate held by a person in his own right only, without any other person being joined or connected with him in point of interest, during his estate. This is the most common and usual way of holding an estate. 2 *Bl. Com.* 179. *Cruise Dig.* tit. xviii. ch. 1. sect. 1.

**ESTATE IN JOINT TENANCY.** An estate in lands or tenements granted to two or more persons, to hold in fee simple, fee tail, for life, for years, or at will. 2 *Bl. Com.* 180. 2 *Crabb's Real Prop.* 937. *Cruise Dig.* tit. xviii. ch. 1. sect. 2. — An estate acquired by two or more persons in the same land, by the same title, (not being a title by descent,) and at the same period; and without any limitation by words importing that they are to take in distinct shares. 1 *Steph. Com.* 312. The most remarkable incident or consequence of this kind of estate is, that it is subject to survivorship. *Id.* 315. See *Survivorship*. It is an estate not favored in law. 2 *Chitty's Bl. Com.* 180, note. See 4 *Kent's Com.* 357. 2 *Greenl. Cruise Dig.* 352, note. In New-York, every estate, granted or devised to two or more persons in their own right, has been declared to be a tenancy in common, unless expressly declared to be in joint tenancy; but every estate vested in executors or trustees, as such, shall be held by them in joint tenancy. 1 *N. Y. Rev. St.* [727], 721, § 44. See *Joint Tenancy*.

**ESTATE IN COPARCENARY.** An estate acquired by two or more persons, (usually females,) by descent from the same ancestor.\* 2 *Bl. Com.* 187. 1 *Steph. Com.* 319. *Cruise Dig.* tit. xix. See *Coparcenary*. See 4 *Kent's Com.* 366. 2 *Greenleaf's Cruise Dig.* 382, notes.

**ESTATE IN COMMON.** An estate in lands held by two or more persons, with interests accruing under different titles; or accruing under the same title, but at different periods; or conferred by words of limitation importing that the grantees are to take in distinct shares. 1 *Steph. Com.* 323. See *Tenancy in common*. See *Cruise Dig.* tit. xx. 2 *Greenleaf's Cruise Dig.* 390, et seq. notes.

**ESTATES OF THE REALM.** In English law. The lords spiritual, the lords

temporal, and the commons of Great Britain. 1 *Bl. Com.* 153. 2 *Steph. Com.* 356.

**ESTATUTE, Estatut.** L. Fr. A statute. *Soloneqz les estatutes de Wyncester*; according to the statutes of Winchester. *Britt. c.* 12. *En nos estatutz de Westminster.* *Id. c.* 14.

**ESTAUNKE.** L. Fr. A pool or wear; a stank. *Britt. c.* 54. *Id. c.* 61.

**ESTE.** L. Fr. Been. *Avera este tue*; shall have been slain. *Britt. c.* 23.

**ESTENDRE.** L. Fr. To extend, or lay out. *Britt. c.* 71. See *Extend. Estendu*; extended. *Id. c.* 53. *Estendour*; an extender. *Id. c.* 71.

**ESTENTE.** L. Fr. Extent; the laying out of lands. *Britt. c.* 71.

**ESTER, Estre.** L. Fr. To stand; to be. *De ester a droit*; to stand to the right; to meet an accusation, (*de stando ad rectum*.) *Britt. c.* 27. See *Ad standum recto*.

**ESTERLING, Sterling.** [L. Lat. *esterlingus, sterlingus*.] The silver penny of England, (*denarius argenteus*.) *Spelman, voc. Esterlingus*. See *Denarius*.

Good money, (*moneta proba*), as distinguished from bad (*reproba*.) *Spelman*.

Lawful money in general. *Id.*

Standard silver money. *Argent del allay del esterling. Artic. sup. Chart. c.* 20.

According to *Spelman* and *Dufresne*, this word was derived from the *Esterlingi*, or *Easterlings*, (people from the *East*), as those Saxons were anciently called who inhabited that district of Germany afterwards occupied by the Hanse Towns and their appendages, and by whom the arts of assaying and coining silver are said to have been introduced into England. 1 *Bl. Com.* 278, note. Lord Coke observes that the esterling or sterling penny took the name of the workmen, being Esterlings, that both coined it and gave it the allay. 2 *Inst.* 575.

**ESTOP.** [L. Fr. *estopper*; L. Lat. *op-pilare, obstaré, obstipare*.] To stop, bar, or impede; to prevent, to preclude. *Co. Litt.* 352 a. See *Estoppel*.

**ESTOPPER, Estoper.** L. Fr. To stop, or obstruct, as by damming up a stream. *De ewes estoppes*; of water courses stopped. *Britt. c.* 29.

**ESTOPPEL.** [from *estop*; L. Lat. *op-pilare*.] An impediment, or bar by which a man is precluded in law from alleging or denying a fact, in consequence of his own previous act, allegation or denial, to the contrary.\* *Steph. Pl.* 196, 197.—An estoppel is where a man has done some act, or executed some deed, which *estops* or precludes him from averring any thing to the contrary. 3 *Bl. Com.* 308.—It is called an estoppel, says Lord Coke, “because a man’s own act or acceptance stoppeth or closeth up his mouth to allege or plead the truth.” *Co. Litt.* 352 a. 2 *Crabb’s Real Prop.* 1046, § 2432. This is called by Mr. Smith, “a startling,” and by Mr. Best, “an unlucky” definition; the last named writer observing that “one would imagine from the language of Sir E. Coke, that truth was the enemy which the law of estoppel was invented to exclude.” 2 *Smith’s Lead. Cas.* 436. *Best on Evid.* 403, § 362. The definition given in the *Termes de la ley* is less objectionable; “Estoppel is where one is concluded and forbidden to speak against his own act or deed, yea, *though it be to say the truth*.” And see, as to the doctrine of estoppels, and the reason of it, 4 *Kent’s Com.* 261, and note.

**ESTOPPEL BY MATTER OF RECORD.** An estoppel founded upon matter of record; as a confession or admission made in pleading in a court of record, which precludes the party from afterwards contesting the same fact in the same suit. *Steph. Pl.* 197. As to this kind of estoppel, and the doctrine of the conclusive effect of a record, see 2 *Smith’s Lead. Cas.* 437—445, and American ed. note. Lord Coke classes letters patent, fines and recoveries among matters of record which estop a party. *Co. Litt.* 352 a.

**ESTOPPEL BY DEED** is where a party has executed a deed, that is, a writing under seal (as a bond) reciting a certain fact, and is thereby precluded from afterwards denying, in any action brought upon that instrument, the fact so recited. *Steph. Pl.* 197. A man shall always be *estopped* by his own deed, or not permitted to aver or prove any thing in contradiction to what he has once so solemnly and deliberately avowed. 2 *Bl. Com.* 295. *Plowd.* 434. *Cowp.* 601. 2 *Crabb’s Real Prop.* 1046, § 2432. 2 *Smith’s Lead. Cas.* 456, 457. 4 *Kent’s Com.* 261, and note. A writing which is not technically a deed, that is, which is not under seal, does not operate as an estoppel. A good example of this is the case of a receipt.

*Smith on Contracts*, 16. Bronson, J., (dissenting,) 3 *Hill’s* (N. Y.) *R.* 215, 220.

**ESTOPPEL BY MATTER IN PAIS**, (or *in the country*.) An estoppel by matter that is neither a record, nor a deed,\* such as livery, entry, acceptance of rent, &c. *Co. Litt.* 352 a. Thus, where one man has accepted rent of another, he will be estopped from afterwards denying in any action with that person that he was, at the time of such acceptance, his tenant. *Steph. Pl.* 197. *Com. Dig.* Estoppel. *Co. Litt.* 352 a. 2 *Smith’s Lead. Cas.* 458. See 3 *Hill’s* (N. Y.) *R.* 215. Bronson, J., *Id.* 220. 4 *Mann. & Gr.* 209. Admissions belong to this division of estoppels.

**ESTOPPEL.** In pleading. A plea, replication or other pleading, which, without confessing or denying the matter of fact adversely alleged, relies merely on some matter of estoppel as a ground for excluding the opposite party from the allegation of the fact. *Steph. Pl.* 219. 3 *Bl. Com.* 308.

**ESTOVER.** L. Fr. & Eng. [L. Lat. *estoverium*.] An allowance made to a person. See *Estoverium*. The plural only (*estovers*,) is now used. See *Estovers*.

**ESTOVER.** L. Fr. To furnish, or supply. *Britt. c.* 103.  
To be necessary. *Id. c.* 75.

**ESTOVERIUM.** L. Lat. In old English law. An estover; an allowance made to a person out of an estate, or other thing, for his or her support. An allowance of wood (*in boscis*) made to a tenant in dower for repairs (*ad œdificandum*), fuel, (*ardendum*), and fencing, (*claudendum*.) *Bract.* fol. 315. See *Magna Charta*, c. 7. An allowance of wood to a commoner for similar purposes. *Bract.* fol. 222 b, 231. An allowance made to a man arrested for felony for the support of himself and family during his imprisonment. *Id.* fol. 136 b, 137.

The plural *estoveria* is used by more modern writers. *Estoveria œdificandi, arandi, arandi et claudendi*; estovers of building, (house-bote,) burning, (fire-bote,) ploughing, (plough-bote,) and enclosing, (hedge-bote.) *Co. Litt.* 41 b. See *Stat. Westm.* 2, c. 25.

**ESTOVERS.** L. Fr. & Eng. [L. Lat. *estoveria*, and more anciently *estoverium*; from Fr. *estouver*, or *estover*, to furnish, supply or maintain.] An allowance made to a person out of an estate, or other thing for

his or her support, as for food and raiment, (*in victu et vestitu.*) *Stat. Gloc. c. 4.* See *Estover, Estoverium*. An allowance (more commonly called *alimony*;) granted to a woman divorced *a mensa et thoro*, for her support out of her husband's estate. 1 *Bl. Com.* 441.

An allowance of wood made to a tenant for life or years; a liberty of taking necessary wood for the use or furniture of his house or farm from off the land demised to him. 2 *Bl. Com.* 35. 1 *Steph. Com.* 241, 269. 2 *Crabb's Real Prop.* 76, § 1044. *Bisset on Estates*, 276, 277. 4 *Kent's Com.* 73. This is the ordinary meaning of the word *estovers*, which are also called in law *botes*, embracing the various kinds of *house-bote, fire-bote, plough-bote, and hay-bote*. See *Botes*. *Estovers* are sometimes erroneously confounded with *common of estovers*, (q. v.) and the distinction is not clearly made by Britton in his 60th chapter *De renables estovers*.

**ESTOYER, Estoier, Estere, Ester.** L. Fr. [from Lat. *stare*.] To stand, to stand good; to stand to, or abide. *Kelham*. *Estoyse le primer jugement*; the first judgment shall stand. *Britt. c.* 105.

**ESTRAUNGE.** L. Fr. A stranger. *Britt. c.* 12.

**ESTRAY.** [L. Fr. *estraye, estrayeur*; L. Lat. *extrahura, from extra*, without.] Any thing out of its place, especially an animal that has escaped from its owner, and wanders or strays about; a wandering animal, (*animal palans.*) *Spelman*, voc. *Extrahura*.—*Pecus vagans, quod nulus petit, sequitur vel advocat*; a wandering beast, which no one seeks, follows or claims. *Fleta*, lib. 1, c. 43. *Bract. fol.* 120.—Cattle whose owner is unknown. 2 *Kent's Com.* 359. See *U. S. Digest* and *Supplement*, *Estray*.

In English law, an *estray* is any valuable animal, [whether beast or bird,] that is not wild, found within a lordship, and whose owner is not known; and which belongs to the king, or to the lord of the manor by special grant from the crown.\* 1 *Bl. Com.* 297, 298. 2 *Id.* 14. 2 *Steph. Com.* 561, 562. 1 *Crabb's Real Prop.* 513—518, §§ 665—671.

**ESTRE.** *Estr'*. L. Fr. To be; being. *Del bien estre*; of well being. *Britt. c.* 39. *Esteant*; being. *Este*; been. *Estoie*; was. *Id. passim.* L. Fr. *Dict.*

**ESTREAT.** [L. Fr. *estrete*; L. Lat. *ex-*

*tractum*.] In practice. A true copy or duplicate of an original writing. *Cowell*.

An extract from the rolls or records of a court, especially records of amercements.\*

A forfeited recognizance taken out, (estimated, i. e. *extracted*) from among the other records of the court, and sent or returned to the court of exchequer to be prosecuted. 4 *Bl. Com.* 253. This last is the modern meaning.

Anciently, in the English court of common pleas, after the amercements had been entered on record, which was done without assessing any sum, the clerk of the warrants made the *estreats*, (that is, *extracts* or copies from the record,) and delivered them to the clerks of the assize, by whom they were delivered to the coroners to affeer the amercements. See *Affeer*. After the coroners had affeered or assessed the amercements, they were delivered back through the same channel to the clerk of the warrants, and then the rolls of the *estreats*, thus completed, were carried into the exchequer. *F. N. B.* 75 I. K. 76. Fitzherbert explains these proceedings in detail, and gives a form of the *estreat*. *Id. ibid.* See *Stat. 3 & 4 Will. IV. c.* 99.

**TO ESTREAT.** To take out a forfeited recognizance from the records of a court, and return it to the court of exchequer, to be prosecuted. See *Estreat*.

**ESTREITE, Estreyte.** L. Fr. [from Lat. *strictus*.] Straitened; contracted; narrowed. *De ewes estoppes ou estreites*; of water courses stopped or narrowed. *Britt. c.* 29.

Strict; limited. *Id. c.* 55, 34.

**ESTREPAMENTUM, Estrepementum.** L. Lat. In old English law. *Estrepement*; a destructive kind of waste committed by a tenant for life or years in lands, woods or houses. *Spelman. Reg. Orig.* 76 b, 77. *Reg. Jud.* 33. See *Estrepement*.

**ESTREPE.** L. Fr. [from Fr. *estropier*, to mutilate, or Lat. *extirpare*, to root up.] To strip or lay bare, as trees of their branches, or land of wood, houses, &c. To commit waste or spoil in lands, woods or houses, to the damage of another, as of a reversioner.\* See *Estrepement*.

**ESTREPEMENT, Estrepment.** L. Fr. & Eng. [L. Lat. *estrepamentum*; from Fr. *estrepo*, or *estropier*, to mutilate; or Lat. *extirpare*, to root up, or utterly destroy.] Spoil made by tenant for life upon any lands or woods, to the prejudice of the re-

versioner, as by drawing out the heart of the land by ploughing or sowing it continually, without manuring, or other such usage as is requisite in good husbandry; or by cutting down trees, or lopping them further than the law will allow. *Cowell. Blount.* Called in the old books *strip*. *F. N. B.* 60, 61.

An aggravated kind of waste (*gravius vasti genus*.) committed in lands, woods, or houses by a tenant for life or years, and especially during the pendency of a suit to recover possession; as by cutting down trees, destroying houses, &c., to the prejudice of the reversioner.\*

The etymology of this word, as well as its precise meaning, does not seem to be expressed with much clearness in the books. Practically, it appears to have been considered the same as waste, distinguished only by the circumstances under which it was committed, viz.: during the pendency of a suit. This, at least, seems to have been the principal distinction between a writ of *estrepement*, and a writ of *waste* proper. 3 *Bl. Com.* 225, 226. Spelman is the only writer who seems to have discovered the true derivation of the word, and through that to have arrived at its radical meaning. *Estrepamentum* is quasi *extirpamentum*, from *extirpare*, to root out, or rase to the foundations; to destroy utterly, (*delere*.) In confirmation of this he refers to the judicial writ *de estrepamento* in the Register, in which the word *extirpare* is prominently used. *Reg. Jud.* 33 b. Two other writs in the Register of similar character are called writs *de extirpatione*. *Reg. Jud.* 13, 58 b. See *Termes de la ley*, voc. *Extirpation*.

ESTRETE. L. Fr. An extract. *Britt.* c. 26. See *Estreat*.

ESTRETEMENT, *Estreytement*. L. Fr. Strictly; closely. *Britt.* c. 100, 104.

ET. Lat. & Fr. And. See *Calv. Lex. Jur.*

ET ADJOURNATUR. L. Lat. And it is adjourned. A phrase used in the old reports, where the argument of a cause was adjourned to another day; or where a second argument was had. 1 *Keb.* 692, 754, 773. *Cro. El.* 180. *T. Raym.* 55. See *Adjournatur*.

ET AL. (Abbreviation of *Et alius* or *alium*.) Lat. And another. ET ALS. (abbrev. of *Et alios*.) And others. Abbreviations often used in entitling causes, where

there are two or more plaintiffs or defendants.

ET DE HOC PONIT SE SUPER PATRIAM. L. Lat. And of this he puts himself upon the country. The old conclusion of a plea in bar by way of traverse. Literally translated in the modern forms. See *Conclusion to the country*.

ET EI LEGITUR IN HÆC VERBA. L. Lat. And it is read to him in these words. Words formerly used in entering the prayer of oyer on record. See *Oyer*.

ET HABEAS IBI TUNC HOC BREVE. L. Lat. And have you then there this writ. A clause in old writs expressive of the command to return them. *Reg. Jud.* 1. *Towns. Pl.* 166. Literally translated in the modern forms.

ET HOC PARATUS EST VERIFICARE. L. Lat. And this he is ready to verify. The ancient conclusion of a plea in bar in confession and avoidance. *T. Raym.* 50, 94. 1 *Salk.* 2. *Bract.* fol. 306 b. Literally translated in the modern forms.

ET HOC PETIT QUOD INQUIRATUR PER PATRIAM. L. Lat. And this he prays may be inquired of by the country. The conclusion of a plaintiff's pleading, tendering an issue to the country. 1 *Salk.* 6. Literally translated in the modern forms.

ET INDE PETIT JUDICIUM. L. Lat. And thereupon, (or thereof,) he prays judgment. A clause at the end of pleadings, praying the judgment of the court in favor of the party pleading. It occurs as early as the time of Bracton, and is literally translated in the modern forms. *Bract.* fol. 57 b. *Crabb's Hist. Eng. Law*, 217.

ET INDE PRODUCIT SECTAM. L. Lat. And thereupon, (or thereof,) he produces suit. A formula used at the conclusion of declarations, from a very early period, to express the fact that the plaintiff produced to the court, at the time of declaring, the testimony of his *secta*, (i. e. his suit or followers,) for the purpose of confirming his allegations, which the ancient law required. *Bract.* 214 b, 410 a. *Steph. Plead.* 429. 3 *Bl. Com.* 295. *Gilb. C. Pleas*, 48. *Towns. Pl.* 166. This soon became a mere form, but the clause was retained, though apparently in a new sense, as being supposed to express summarily



the grounds of the *suit* or action, and was afterwards translated into the English formula: "And thereupon (or therefore) he brings his suit," with which declarations now conclude. See *Suit, Secta*.

ET ISSINT. L. Fr. And so. *Co. Litt.* 303 b.

ET MODO AD HUNC DIEM. L. Lat. And now at this day. Words anciently used (as the corresponding English words still are) in entering continuances on record; expressive of the day of appearance of the parties.

ET NON. L. Lat. And not. Words sometimes anciently used in pleading, instead of *absque hoc*, (q. v.)

ET PRÆDICTUS A. SIMILITER. L. Lat. And the said A. likewise. The Latin form of the *similiter* in pleading. See *Similiter*.

ET SIC. L. Lat. And so. The commencement of a formula, (as, *et sic nil debet, et sic non est factum*,) formerly used as a special conclusion to a plea in bar, in order to render it positive, and to avoid the fault of argumentativeness. *Archb. Civ. Pl.* 224. *Manuel on Demurrer*, 75.

ET SIC PENDET. Lat. And so it hangs. A term used in the old reports to signify that a point was left undetermined. *T. Raym.* 168.

EUANGELIES, *Evangelines*. L. Fr. The gospels; or evangelists. *Paumaunt les Evangelies*; laying hands on the gospels. *Britt. c.* 52. *Jurer sur seyntz Evangelies de Dieu*; to swear upon the Holy Evangelists of God. *Id. c.* 97.

EUNDO, MORANDO, ET REDEUNDO. L. Lat. In going, staying, and returning. A phrase used to express the extent of the privilege from arrest enjoyed by the parties to suits, witnesses, &c. See *Privilege from arrest*. A similar phrase was used in the Saxon law. *Eundo ad gemotum et rediens de gemoto*. *Spelman, voc. Gemotum*. *LL. Edw. Conf. c.* 25, cited *ibid*.

EVASIO. Lat. [from *evadere*, to escape.] In old practice. An escape from prison or custody. *Reg. Orig.* 312.

EVENTUS. Lat. [from *evenire*, to come out, or come from.] An event; a thing which happens from a cause. *Even-*

*tus est qui ex causa sequitur, et dicuntur eventus quia ex causa eveniunt*; an event is that which follows from a cause, and they are called events because they come out of a cause. 9 *Co.* 81 b.

EVERWYK. L. Fr. York. *Reg. Orig.* 76 b, *regula*. Probably shortened from the Lat. *Eboracum, Eborac, Evorac*.

EVESCHE, *Euesche*. L. Fr. A diocese. *Britt. c.* 107.

EVESQUE. L. Fr. A bishop. *Litt. sect.* 651.

EVESQUERY. L. Fr. A bishopric. *Litt. sect.* 651.

EVICT. [from Lat. *evincere*, q. v.] In the civil law. To take something from a person by virtue of a judicial sentence or recovery at law. *Evincere est aliquid vincendo auferre*.\* *Pothier Contr. of Sale*, part 2, ch. 1, sect. 2, art. 1.

In the common law. To recover land by process of law. "If the land is *evicted*, no rent shall be paid." 10 *Co.* 128 a. The term is now applied to a tenant against whom land is recovered, or who is otherwise compelled to leave the demised premises. "If the tenant be *evicted* from the lands demised to him, by a title paramount, before the rent falls due, he will be discharged from the payment of the rent." 3 *Kent's Com.* 464. See *Eviction*.

EVICITION. [Lat. *evictio*, from *evincere*, to overcome, to prevail in law.] In the civil law. The abandonment which one is obliged to make of a thing, in pursuance of a sentence by which he is condemned to do so. *Pothier Contr. of Sale*, part 2, ch. 1, sect. 2, art. 1, n. 83. The abandonment which a buyer is compelled to make of a thing purchased, in pursuance of a judicial sentence.\* *Id. ibid*.

The sentence which orders such abandonment. *Id.*

The depriving a buyer, without any sentence, of the power to retain the thing bought, in virtue of the sale. *Id. n.* 86.

The loss suffered by the buyer of the totality of the thing sold, or of a part thereof, occasioned by the right or claims of a third person. *Civil Code of Louisiana*, art. 2476.

EVICITION. In the common law. The recovery of lands, &c., by form of law.\* 10 *Co.* 128. *Tomlins*.

The recovery from a tenant of the whole

or a part of the demised premises, by a title paramount to that derived from his landlord.\* 3 *Kent's Com.* 464, 465.

The compelling a tenant to abandon the demised premises, by rendering them unfit for occupation; as by a nuisance.\* *Id.* 464, note. 1 *Carr. & M.* 479.

The recovery from a vendee of land purchased by him, under a paramount title.\* 4 *Kent's Com.* 475—477.

**EVIDENCE.** [Lat. *evidentia*, from *evidens*, clear.] That which tends to render evident, or clear; the means by which the truth of a fact or point in issue is made clear or demonstrated.\* *Best on Evid.* 8, § 11. 3 *Bl. Com.* 367. — Any matter of fact, the effect, tendency or design of which is to produce in the mind a persuasion affirmative or disaffirmative of the existence of some other matter of fact. *Best on Evid. ub. sup.* 1 *Benth. Jud. Ev.* 17. — The word *evidence*, in legal acceptation, includes all the means by which any alleged matter of fact, the truth of which is submitted to investigation, is established or disproved. 1 *Greenleaf on Evid.* § 1.

Any proof, be it testimony of men, records or writings. *Cowell.* Proof, either written or unwritten, of facts in issue between parties. *Wharton's Lex.* The terms *evidence* and *proof* are constantly used in practice as synonymous. 3 *Bl. Com.* 367. 3 *Steph. Com.* 604. Strictly, however, *proof* is the effect of evidence. 1 *Greenl. on Ev.* § 1. Without evidence there can be no proof, although there may be evidence which does not amount to proof. *Best on Presumptions*, 8, § 6.

**EVIDENCE OF DEBT.** A term applied to written instruments or securities for the payment of money, importing on their face the existence of a debt. 1 *N.Y. Rev. Stat.* [599,] 601, § 5.

**EVIDENCES OF TITLE.** Deeds and other documents establishing the title to property, especially real estate, (*quibus jus prædiorum firmatur.*) *Spelman.*

**EVINCERE.** Lat. In the civil law. To overcome or prevail at law, (*vincere judicio.*) *Calvin's Lex. Jur.*

To take a thing from one by right of ownership, through a judicial sentence, (*per sententiam judicis.*) *Brissonius.*

To claim a thing by suit as one's own by right of ownership, from him who had no right to it, but has given or sold it to another, and to wrest it from the purchaser

by a judicial sentence, condemning him to give it up. *Præteius Lex.*

**EW. Sax. Marriage.** See *Ewbrice.*

**EWA. L. Lat.** In old German and Saxon law. Law. *Spelman.*

**EWAGE.** [from L. Fr. *eue*, q. v.] In old English law. Toll paid for water passage. The same as *aquage.* *Cowell. Tomlins.*

**EWBRICE.** Sax. [from *ew*, marriage, and *brice*, or *bryce*, a breach.] Marriage breach; adultery. *Cowell. Blount. Tomlins.*

**ewe. L. Fr. Water.** *Ewe douce*; fresh water. *Britt. c. 1. Au fil del ewe*; to the thread (edge) of the stream. *Id. c. 42.*

**ewe. L. Fr. Had. Litt. sect.** 253, 690.

**EX. Lat.** From; of; out of. *Ex facto*, (q. v.); from fact. *Ex contractu*, (q. v.); from, or out of contract. *Ex mero motu*, (q. v.); of mere motion. See 2 *Salk.* 622.

By, or with. *Ex assensu*, (q. v.); by the assent. *Ex causa*, (q. v.); by title.

On; upon. *Ex dimissione*, (q. v.); on the demise. *Ex facie*, (q. v.); on the face. *Ex relatione*, (q. v.); on the relation.

According to. *Ex aquo*, (q. v.); according to equity.

At or in. *Ex arbitrio*, (q. v.); at the discretion.

**EX ABUNDANTI.** Lat. Out of abundance; abundantly; superfluously; more than sufficient. *Calv. Lex. Jur.* *Ex abundantia cautela*; out of abundant or excessive caution.

**EX ÆQUO ET BONO.** Lat. According to what is just and good; according to equity and good morals or conscience. 3 *Bl. Com.* 162. A phrase derived from the civil law, in which it is more commonly expressed *ex bono et æquo*, (q. v.)

**Ex antecedentibus et consequentibus at optima interpretatio.** The best interpretation [of a part of an instrument] is made from the antecedents and the consequents, [from the preceding and following parts.] 2 *Inst.* 317. The law will judge of a deed or other instrument consisting of divers parts or clauses, by looking at the whole; and will give to each part its proper office, so as to ascertain and carry out the inten-

tion of the parties. *Broom's Max.* 249. The whole instrument is to be viewed and compared in all its parts, so that every part of it may be made consistent and effectual. 2 *Kent's Com.* 555. The construction must be made upon the entire instrument, and not merely upon disjointed parts of it; the whole contract must be considered, in endeavoring to collect the intention of the parties, although the immediate object of inquiry be the meaning of an isolated clause. *Broom's Max.* 249; and cases cited *ibid.* See *Antecedens.*

EX ARBITRIO JUDICIS. Lat. At, in or upon the discretion of the judge. 4 *Bl. Com.* 394. A term of the civil law. *Inst.* 4. 6. 31.

EX ASSENSU PATRIS. Lat. By or with the father's consent. *Litt.* sect. 40. 2 *Bl. Com.* 133. See *Cro. Jac.* 415, 587.

EX ASSIGNATIONE. L. Lat. From, or on the assignment. *Reg. Orig.* 75 b.

EX BONIS. Lat. Of the goods or property. A term of the civil law; distinguished from *in bonis*, as being descriptive of, or applicable to property not in actual possession. *Calv. Lex. Jur.* *Sive in bonis sit, sive non, si tamen ex bonis sit, locum hæc actio habebit*; whether it be actually among his goods, (in his actual possession) or not, yet if it be of his goods, (or a part of his property) this action shall have place. *Inst.* 4. 2. 2.

EX BONO ET ÆQUO. Lat. According to what is good and just; according to conscience and equity; according to good faith and equity. *Inst.* 4. 6. 30, 31, 39. A phrase of the civil law.

EX CAUSA. L. Lat. By title. Ex causâ *successionis*, sive ex causâ *perquisiti*; by title of succession, or by title of purchase. *Bract.* fol. 92 b. Ex causâ *successionis*, vel *donationis*, vel ex causâ *dotis*, vel ex aliqua alia *justa causa acquirendi*; by title of succession, or of gift; or by title of dower, or by any other lawful title. *Id.* fol. 183 b. See *Id.* fol. 10 b. Ex una causâ—ex eadem causâ—ex nova causâ. *Id.* fol. 45.

EX CERTA SCIENTIA. Lat. Of certain or sure knowledge. Formal words anciently used in letters patent, implying that the king had full knowledge and understanding of the matter. 1 *Co.* 40 b; *Alton Wood's case.* 1 *Mann. Gr. & Scott,* 518, arg. See *Ex gratia speciali*, &c.

EX COMITATE. Lat. Out of comity, or courtesy. 2 *Kent's Com.* 457. See *Comitas.*

EX COMMODATO. Lat. From, or out of loan. A term applied in the old law of England to a right of action arising out of a loan, (*commodatum.*) *Glanv.* lib. 10, c. 13. 1 *Reeves' Hist.* 166.

EX COMPARATIONE SCRIPTORUM. L. Lat. By a comparison of writings, or handwritings. A term in the law of evidence. *Best on Presumptions*, 218. See *Comparison*, *Comparatio.*

EX CONCESSIONE. L. Lat. From, on or by the grant. *Reg. Orig.* 75 b.

EX CONCESSIS. Lat. From things or premises granted.

EX CONTINENTI. Lat. Immediately; without any interval or delay; incontinently. A term of the civil law. *Calv. Lex. Jur.*

EX CONTRACTU. Lat. From contract; arising out of, or founded on contract; the opposite of *ex delicto*. A term of the civil law, expressive of one of the principal divisions of the grounds of obligations and of actions. *Inst.* 3. 14. 2. *Id.* 4. 1. pr. *Id.* 4. 6. 1, 17, 18. 1 *Mackeld. Civ. Law*, 101, § 195. Adopted at a very early period in the English common law, and still constantly employed in the law of actions. *Bract.* fol. 99. 3 *Bl. Com.* 117. 1 *Tidd's Pr.* 1. 1 *Chitt. Pl.* 2.

EX DEBITO JUSTITIÆ. L. Lat. From, or as a debt of justice; in accordance with the requirement of justice; of right; as a matter of right. The opposite of *ex gratia* (q. v.) 3 *Bl. Com.* 48, 67. 4 *Id.* 330, 392. In the Mirror, writs grantable *come de del* (as of debt or right,) are distinguished from those *de grace.* *Mirr.* c. 5, § 1. 9 *Co.* pref.

EX DELICTO. Lat. From fault or crime; arising out of, or founded upon misconduct, malfeasance or tort. A term of the civil law, expressive of one of the principal divisions of the grounds of obligations and of actions. *Inst.* 4. 1. tit. & pr. 1 *Mackeld. Civ. Law*, 192, § 195. Constantly associated with its opposite *ex contractu*, and introduced with that term into the law of England at a very early period. *Bract.* fol. 101 b. 3 *Bl. Com.* 117. See *Ex contractu.*

As a consequence of crime, or violation

of law. Used in this sense in the law of nations. "Contraband goods are seized and condemned *ex delicto*." 1 *Kent's Com.* 143. See *Id.* 125.

**EX DEM.** An abbreviation of *ex demissione*, (on the demise); frequently used in the titles of ejectment suits. See the reports *passim*.

**EX DEMISSIONE.** L. Lat. From, or on the demise. Usually written *ex demissione*, (q. v.)

**EX DICTO MAJORIS PARTIS.** L. Lat. According to the speech, word or expressed opinion of the majority.

**EX DIMISSIONE.** L. Lat. On the demise. *Reg. Orig.* 75 b, 163 b.

**EX DIRECTO.** L. Lat. Directly; immediately. *Story on Bills*, § 199.

**Ex disturnitate temporis, omnia presumuntur solemniter esse acta.** From length of time [after lapse of time] all things are presumed to have been done in due form. *Co. Litt.* 6 b. *Best on Evid.* Introd. § 43. 1 *Greenl. on Ev.* § 20.

**EX DOLO MALO.** Lat. Out of fraud. **Ex dolo malo non oritur actio.** Out of fraud no action arises; fraud never gives a right of action. *Cowp.* 341, 343. *Broom's Max.* 349. See *Dolus malus*.

**EX EMPTO.** Lat. Out of purchase; founded on purchase. A term of the civil law, adopted by Bracton. *Inst.* 4. 6. 28. *Bract.* fol. 102. See *Actio ex empto*.

**EX FACIE.** L. Lat. On the face. 2 *Steph. Com.* 158.

**EX FACILI.** Lat. Easily. *Calv. Lex. Jur.*

**EX FACTO.** Lat. From, by or in consequence of an act, or thing done. *Bract.* fol. 172. Applied generally to an act done in violation of law or right. A title is said to originate *ex facto*, when it commences in an unlawful act. *Id. ibid.* Bracton uses it in the same sense with *de facto*, (q. v.) *Id. ibid.*

**Ex facto jus oritur.** Law arises out of fact, or is brought into exercise by fact.\* A rule of law continues in abstraction and theory, until an act is done on which it can attach and assume as it were a body and shape. *Best on Evid.* Introd. § 1.

The law arises out of the fact, or is determined or regulated by the fact. 3 *Bl. Com.* 329. The decision of the law in a particular case depends upon the fact which is proved or made to appear. Otherwise expressed, *De facto jus oritur*. 2 *Inst.* 49.

**EX FICTIONE JURIS.** L. Lat. Out of, or by fiction of law. *Bract.* fol. 53.

**EX GRATIA.** Lat. Out of grace, or favor; (*Fr. de grace*); as a matter of mere grace or indulgence. The opposite of *ex debito*. 4 *Bl. Com.* 392.

**EX GRATIA SPECIALI, CERTA SCIENTIA ET MERO MOTU.** L. Lat. Out of special grace, certain knowledge and mere motion. Formal words anciently used in royal charters and letters patent; otherwise expressed, *De gratia speciali, ex certa scientia, et mero motu*, (q. v.) 1 *Co.* 43, 45, 46, 49. See 6 *Peters' R.* 691, 738.

**EX GRAVI QUERELA.** L. Lat. (From, or on the grievous complaint.) In old English practice. The name of a writ (so called from its initial words,) which lay for a person to whom any lands or tenements in fee were devised by will, (within any city, town or borough wherein lands were devisable by custom,) and the heir of the devisor entered and detained them from him. *Reg. Orig.* 244 b. *F. N. B.* 198 L, et seq. 3 *Reeves' Hist.* 49. Abolished by statute 3 & 4 Will. IV. c. 27, § 36.

**EX INDUSTRIA.** Lat. From, or with a deliberate design; on purpose. *Story, J.*, 1 *Wheaton's R.* 304. 1 *Kent's Com.* 318.

**EX INSINUATIONE.** L. Lat. On the suggestion or information. *Reg. Jud.* 25.

**EX INTEGRO.** Lat. Anew; afresh. *Bract.* fol. 293.

**EX JUSTA CAUSA.** Lat. From a just or lawful cause; by a just or legal title. See *Ex causa*.

**EX LEGIBUS.** Lat. According to the laws. A phrase of the civil law, which the Digests declare to signify—according to the intent or spirit of the law, as well as according to the words or letter. (*Ex legibus accipiendum est tam ex legum sententia quam ex verbis*.) *Dig.* 50. 16. 6. See *Calv. Lex.*

**EX LOCATO.** Lat. From, or out of letting. A term of the civil law, applied

to actions or rights of action arising out of the contract of *locatum*, (q. v.) *Inst.* 4. 6. 28. Adopted at an early period in the law of England. *Bract.* fol. 102. 1 *Reeves' Hist.* 166.

**EX MALEFICIO.** Lat. From, arising out of, or founded upon misconduct or malfeasance. A term of the civil law used (more commonly than *ex delicto*,) as the opposite of *ex contractu*. *Inst.* 3. 14. 2. *Id.* 4. 1. pr. Adopted by Bracton, but not much used in this sense in modern law. *Bract.* fol. 99, 101, 102.

Out of a vicious or illegal act. *Ex maleficio non oritur contractus*. A contract cannot arise out of an act radically vicious and illegal. 1 *Term R.* 734. Lord Kenyon, C. J., 3 *Id.* 422. *Broom's Max.* 351.

**EX MERO MOTU.** L. Lat. Of mere motion. Formal words in old English letters patent. 1 *Co.* 40 b; *Alton Wood's case*. See *Ex gratia speciali*, &c.

**EX MORA.** Lat. From, or in consequence of delay. Interest is allowed *ex mora*, that is, where there has been delay in returning a sum borrowed. A term of the civil law. *Story on Bailm.* § 84.

**EX MORE.** Lat. According to custom. *Calv. Lex. Jur.*

*Ex multitudine signorum, colligitur identitas vera*. From a great number of signs or marks, true identity is gathered or made up. *Bacon's Max.* 103, in regula 25. A thing described by a great number of marks is easily identified, though as to some the description may not be strictly correct. *Id.*

**EX MUTUO.** Lat. From, or out of loan. In the old law of England, a debt was said to arise *ex mutuo*, when one lent another anything which consisted in number, weight or measure. 1 *Reeves' Hist.* 159. *Bract.* fol. 99.

**EX NECESSITATE LEGIS.** Lat. From, or by necessity of law. 4 *Bl. Com.* 394.

**EX NECESSITATE REI.** Lat. From the necessity or urgency of the thing or case. 2 *Powell on Dev.* (by Jarman,) 308.

*Ex nudo pacto non oritur [nascitur] actio*. Out of a nude or naked pact, [that is, a bare parol agreement without consideration,] no action arises. *Bract.* fol. 99.

*Plowd.* 305. Out of a promise neither attended with particular solemnity, (such as belongs to a specialty,) nor with any consideration, no legal liability can arise. 2 *Steph. Com.* 113. A parol agreement, without a valid consideration, cannot be made the foundation of an action. A leading maxim both of the civil and common law. *Cod.* 2. 3. 10. *Id.* 5. 14. 1. *Noy's Max.* 24. *Broom's Max.* 336. 2 *Bl. Com.* 445. *Smith on Contracts*, 85, 86. See *Nudum pactum*.

**EX OFFICIO.** Lat. From office; by virtue or as a consequence of office; without any other appointment or authority than that conferred by the office. Courts are bound to take notice of public acts, judicially, and *ex officio*. 1 *Bl. Com.* 86.

**EX PARTE.** L. Lat. From, or of a part or side; of the one part; from, or upon one side. A common term in practice, which seems to have originally been derived from the canon law. *Durand. Spec. Jur.* lib. 2, tit. *De rescript. presentatione, passim*. See *Calv. Lex. Jur.* An *ex parte* application to a court is an application made by one party only, without notice to the opposite party, or opportunity given him to oppose it.\* *Holthouse.* 1 *Burr. Pr.* 340.

**EX PARTE MATERNA.** Lat. On the maternal side; in the maternal line. 1 *Steph. Com.* 382. 2 *Crabb's Real Prop.* 1021, § 2401. *Ex parte matris*; on the side of the mother. *Stat. Westm.* 2, c. 16.

**EX PARTE PATERNA.** Lat. On the paternal side; in the paternal line. 1 *Steph. Com.* 381, 382. 2 *Crabb's Real Prop.* 1020, § 2400, *et seq.* *Ex parte patris*; of the father's side; on the side of the father. *Stat. Westm.* 2, c. 16.

**EX PARTE TALIS.** L. Lat. (On the behalf of such a one.) In old English practice. The name of a writ which lay for a bailiff or receiver, who, having auditors assigned to hear his account, could not obtain of them reasonable allowance, but was cast into prison by them. *Cowell. F. N. B.* 129, f.

**EX PAUCIS.** Lat. From a few things or words.

*Ex paucis dictis intendere plurima possis*.

From a few words you may understand many things. *Litt.* sect. 384. "By this verse," says Lord Coke, "inferences and conclusions in like cases are warrantable." *Co. Litt.* 287.

*Ex paucis plurima concipit ingenium*; from a few words or hints the understanding conceives many things. *Litt. sect. 550.*

**EX POST FACTO**; properly, **EX POSTFACTO**, or **EX POST-FACTO**. Lat. From, by or in consequence of an after-act, or thing done afterwards; by matter of subsequent occurrence; by after-matter. A term of the civil law, introduced into the common law at a very early period, and the precise import of which may be better understood from the following examples. *Quæ ab initio inutilis fuit institutio, ex postfacto convalescere non potest.* An institution or act which was of no effect at the beginning, (when made or done) cannot acquire force or validity from after-matter, (as by lapse of time.) *Dig. 50. 17. 210. Nunquam crescit ex postfacto præteriti delicti æstimatio.* The estimate of the character of a past offence is never enhanced by after-matter. *Dig. 50. 17. 138. 1. Non ex post-facto, sed ex præsentis statu damnum factum sit, necne, æstimari oportere, Labeo ait*; Labeo says that the question whether a damage be done [to a building] or not, is to be determined not from any after-act or occurrence, but from the condition of the building at the time. *Dig. 43. 24. 7. 4. Donationum, quædam valida esse possunt ab initio, et invalida fieri ex post facto, et è converso*; of gifts, some may be valid at the beginning (or when made,) and become invalid by subsequent matter, and è converso. *Bract. fol. 11 b, 12. Non mandante, nec auctoritatem præstante ab initio, sed ex post facto ratum habente*; not commanding nor giving authority at the beginning, (or originally,) but ratifying it by an after-act, (or afterwards.) *Id. fol. 171. Sive ratum habuerit ab initio, vel ex post facto*; whether he ratified it at the beginning or afterwards. *Id. fol. 213. Item id quod ab initio non fuit nocumentum injuriosum, ex post facto, et per constitutionem fieri poterit injuriosum*; also that which originally was not an injurious nuisance, may be made injurious by after-act or matter, and in consequence of agreement. *Id. fol. 232. Poterit esse [summonitio] legitima ab initio, sed inefficax ex post facto*; the summons may be lawful at first, but become of no force in consequence of after-matter, (or afterwards.) *Id. fol. 336 b.*

It will be seen from the preceding quotations, that *ex post facto* has always been used in contrast with the still common phrase *ab initio*, which, indeed, seems to be its proper correlative; and hence the two phrases may be conveniently employed to

illustrate each other. Thus, a man may become a trespasser *ab initio*, (from the beginning, or first act,) in consequence of a subsequent act, (*ex post facto*), although his first act was, at the time it was done, a lawful one. *Chase, J., 3 Dallas' R. 386. See Trespasser ab initio.* On the other hand, an act unlawful in the beginning, (*ab initio*), may in some cases become lawful by matter of after fact, (*ex post facto*.) *Chase, J., ub. sup.* Again, an act which was indifferent in itself when done, (that is, *ab initio*), is sometimes made criminal or punishable *ex post facto*, (by a subsequent act, or matter,) that is, a law made afterwards, (*ex lege post lata*.) See *Ex post facto law*.

*Ex post facto* seems to have been a familiar phrase in English law in the time of Bracton, and the very numerous examples of its use and application furnished by that writer, (a few only of which have been quoted,) show that its grammatical signification was then perfectly well ascertained. Afterwards, however, it fell into comparative disuse, and it may now be said to be less common in English than in American jurisprudence. See *Ex post facto law*. Its substantial import seems to be well enough understood, but its grammatical meaning has, in general, been either wholly misapprehended, or singularly mixed up with error. Thus, it has been translated in two of the latest English law dictionaries,—“from something after the fact,”—“from an after act; after a deed is done.” *Wharton's Lex. Holthouse.* See also opinion of Chase, J., 3 *Dallas' R. 386.* This misapprehension and error have arisen, in part, from the narrow sense given to the word *facto*, (confining it to the acts of individuals,) but principally from the common mode of writing the whole phrase, which presents *post* as a distinct word, thereby not only leading to an ungrammatical connection of its meaning with that of *facto*, (in the expressions “after a deed,” “after the fact,”) but entirely destroying the sense and force of the word *ex*, which, in the ordinary translations, is quite disregarded. Strictly, *post* should be connected with *facto*, either as one entire word, (*postfacto*), in which form it usually occurs in the civil law, and frequently in Bracton, or as a double word, (*post-facto*), the latter form having the express authority of Aulus Gellius, who uses both *post-facta* and *ante-facta* in a passage which will be referred to under *Ex post facto law*. This mode of writing the phrase dissipates at once all the grammatical difficulty hitherto supposed to

attend the use of *post* in immediate juxtaposition with *ex*; (both words being commonly treated as prepositions, although *post* is in fact an adverb, with the sense of *afterwards*.) *Ex post-facto* is thus most distinctly contrasted with its correlative *ab initio*; the full meaning of *ex* in the one phrase being at once seen to correspond with that of *ab* in the other. See *Post-factum*. It may be added that the whole phrase *ex postfacto* is frequently used in old English law, as synonymous with *postea*, (afterwards,) or *post tempus*, (after a time,) *Bract. fol. 213.*

**EX POST FACTO LAW.** A law which operates *by after-enactments*.\* A law which makes an act done before its passage, and which was innocent when done, criminal. 3 *Dallas' R.* 386. A law which renders an act punishable in a manner in which it was not punishable when committed. 6 *Cranch's R.* 87. Marshall C. J., *ibid.* *Federalist*, No. 84. 1 *Kent's Com.* 409. The making of laws *ex post facto* is when, after an action, (indifferent in itself) is committed, the legislator then, for the first time, declares it to have been a crime, and inflicts a punishment upon the person who has committed it. 1 *Bl. Com.* 46. 1 *Steph. Com.* 27.

The use of the term *ex post facto* in the Constitution of the United States, (Art. I. Sect. IX. X.,) has occasioned considerable discussion as to its exact meaning; which, however, has resulted in establishing the definitions above given. An *ex post facto* law is a species of retrospective law, which is confined in its operation to the creation or the punishment of a *crime*; and the term is not properly applicable to any other kind of retrospective enactment. Chase, J., 3 *Dallas' R.* 386. 1 *Kent's Com.* 409. Instead of using the term *ex post facto*, the constitutions of some of the states, in prohibiting such laws, describe them as "laws made to punish for actions done before the existence of such laws;" (*Constitution of Massachusetts*, part 1, sect. 24;) "retrospective laws." *Const. of N. Hampshire*, part 1, art. 23. Others employ both the phrase itself, and its explanation. *Constit. of Florida*, art. 1, sect. 18.

The inaccuracy of most of the literal translations of the phrase *ex post facto* has been already noticed under that head. See *supra*. It appears, however, most strikingly in the attempts made to give a strict and literal explanation of the phrase *ex post facto* law. Thus, it is said, that an *ex post facto* law means a law "passed concerning

and *after a fact* or thing done, or action committed"; a law passed "*after a fact* done by a subject or citizen, which shall have relation to such fact, and shall punish him for having done it." Chase, J., 3 *Dallas' R.* 386. The error of this kind of translation, and the cause of it have been already explained. See *Ex post facto*. The true meaning of the phrase is made very apparent by writing *post-facto* (or *postfacto*) as one word, and thus giving to *ex* its full and proper sense of *from* or *by*. In this way it becomes susceptible not only of a literal, but of a grammatical translation; "an *ex post-facto* law" signifying "a law operating *by after-enactment*"; that is, upon previous acts.

The following passage from Aulus Gellius, while it clearly justifies the use of *post-facto* as one word, furnishes in other respects a very apposite illustration. The old Atinian law had this provision: *Quod subreptum erit, ejus rei aeterna auctoritas esto*; whatever thing shall be privily stolen, let the ownership of that thing be perpetual; that is, the property of the owner shall never be divested out of him by the theft. Gellius records that a question arose upon the word *erit*, as to the operation of this law, and that Scævola, Brutus and Manilius, men of the first learning, were in doubt *utrumne* in *post-facta modo furta lex valeret, an etiam* in *ante facta*; (whether the law took effect only on thefts committed after it, or on those committed before, also.) *Noct. Att.* lib. xvii. c. 7. In other words, the question was, whether this was an *ex post-facto* law or not. The phrase "*in ante-facta*" (upon acts or actions done before,) in this passage, expresses the peculiar operation of such a law more distinctly perhaps than *ex post facto* itself, and is almost literally translated in the best modern definitions. See *supra*. The words *ante-facta* and *post-facto* as contrasted in the same passage both obviously refer exclusively to the acts of *individuals*; but in the phrase *ex post-facto*, the *post-factum* (after-act or post-act) is the act of the *legislature* itself in passing the law; the *ante-factum* being the act of the individual upon which the law is made to operate retrospectively. This distinction is noticed by Mr. Justice Chase, in the case already referred to. 3 *Dallas' R.* 386.

**EX PRÆCOGITATA MALICIA.** L. Lat. Of malice aforethought. *Reg. Orig.* 102.

**EX PROPRIO VIGORE.** L. Lat. By their, or its own force. 2 *Kent's Com.* 457.

**EX PROVISIONE HOMINIS.** L. Lat. By the provision of man. By the limitation of the party, as distinguished from the disposition of the law. 11 Co. 80 b.

**EX REL.** An abbreviation of **EX RELATIONE**, on the relation. A term used in the titles of legal proceedings, which are prosecuted by the people, *on the relation* or information of the aggrieved party, who is called the *relator*. See *Ex relatione, Relator*.

**EX RELATIONE.** L. Lat. On the relation. *Bract.* fol. 403 b.

**EX RELATU.** L. Lat. On the relation, or information. *Reg. Orig.* 34, 36, 42.

**EX SCRIPTIS OLIM VISIS.** L. Lat. From writings formerly seen. A term used as descriptive of that kind of proof of handwriting, where the witness *has seen* letters or documents professing to be the handwriting of a party, and has afterwards had correspondence or communication with such party, so as to induce a reasonable presumption that the letters or documents were actually his handwriting. 5 *Ad. & El.* 703, 730. *Best on Presumptions*, 219.

**EX SPECIALI GRATIA, CERTA SCIENTIA ET MERO MOTU.** L. Lat. Of special grace, certain knowledge, and mere motion. 2 *Bl. Com.* 347. 6 *Peters' R.* 738. See *Ex gratia speciali, &c.*

**EX STIPULATU ACTIO.** Lat. In the civil law. An action of stipulation. An action given to recover marriage portions. *Inst.* 4. 6. 29.

**EX TEMPORE.** Lat. From, or in consequence of time; by lapse of time. *Bract.* fol. 51, 52. *Ex diuturno tempore*; from length of time. *Id.* fol. 51 b.

**EX TESTAMENTO.** Lat. From, by or under a testament, or will. *Inst.* 2. 9. 7.

**Ex tota materia emergat resolutio.** The explanation should arise out of the whole subject matter; the exposition of a statute should be made from all its parts together. *Wingate's Max.* 238.

**EX TRANSVERSO.** Lat. Across. *Ex transverso via*; across the way. *Towns. Pl.* 31. See *A latere*.

**Ex turpi causa non oritur actio.** An action does [can] not arise out of a base

[illegal, or immoral] consideration. 1 *Selwyn's N. Pr.* 63. *Broom's Max.* 350. *Story on Agency*, § 195.

**Ex turpi contractu actio non oritur.** From an immoral, or iniquitous contract, an action does not arise. A contract founded upon an illegal or immoral consideration cannot be enforced by action. 2 *Kent's Com.* 466. *Dig.* 2. 14. 27. 4. All contracts which have for their object anything repugnant to justice, or against the general policy of the common law, or contrary to the provisions of any statute, are void. Nelson, C. J., 2 *Hill's (N. Y.) R.* 434, 437.

**EX VISCERIBUS.** Lat. From the bowels; from the interior or essential substance. *Ex visceribus causæ*; from the bowels or heart of the cause. 10 Co. 24 b. *Ex visceribus testamenti.* 2 *Metcalf's R.* 213.

**EX VISITATIONE DEI.** L. Lat. By the visitation of God. 4 *Bl. Com.* 324.

**EX VISU SCRIPTIIONIS.** L. Lat. From sight of the writing; from having seen a person write. A term employed to describe one of the modes of proof of handwriting. *Best on Presumptions*, 218.

**EX VI TERMINI.** L. Lat. From, or by the force of the term. 2 *Bl. Com.* 109, 115.

**EXACTIO.** L. Lat. A demand. *Co. Litt.* 292 a.

**EXACTION.** A wrong done by an officer or one in pretended authority, by taking a reward or fee for that which the law allows not. *Jacob. Tomlins.*

**EXACTOR.** L. Lat. In old English law. One who collected taxes and other public monies. *Exactor regis*; the king's exactor, who collected the taxes and other monies due to the treasury. In the counties, this office was performed by the sheriff; in the seaports and cities, by publicans and their assistants. *Spelman.*

**EXADONIARE, Exidoniare.** L. Lat. In old European law. To manumit, or make free. *Spelman. L. Alaman.* tit. 18, § 5, cited *ibid.*

**EXALTARE.** L. Lat. To raise or elevate. *Exaltare stagnum*; to raise a pool. *Reg. Orig.* 199. *F. N. B.* 184, O. To raise the water in a pond by damming, so



as to overflow another's land. *Bract.* fol. 232.

**EXAMEN.** L. Lat. A trial. *Examen computi*; the balance of an account. *Towns. Pl.* 223.

**EXAMINATION DE BENE ESSE.** In practice. A conditional examination. The examination of a witness out of court before a trial, with the view of using his deposition in case his personal attendance cannot be procured at the trial. See *De bene esse*.

**EXAMINER IN CHANCERY.** An officer of the court of chancery, before whom witnesses are examined, and their testimony reduced to writing, for the purpose of being read on the hearing of the cause. *Cowell. 2 Daniell's Chanc. Pract.* 1053, (Perkins' ed.) *et seq.*

**EXANNUAL ROLL.** In old English practice. A roll into which (in the old way of exhibiting sheriff's accounts,) the illeivable fines and desperate debts were transcribed, and which was annually read to see what might be gotten. *Hale's Sheriff's Accounts*, 67. *Cowell.*

**EXCADENTILÆ.** L. Lat. (*terræ ex cadentiales*.) In old European law. Escheats, or escheated lands. *Spelman. Fleta*, lib. 6, c. 1. *Co. Litt.* 13 a. *Cowell, voc. Escheat.*

**EXCAMBIARE, Excambire.** L. Lat. In old English law. To exchange. *Spelman. Excambiator*; an exchanger, a broker. *Cowell.*

**EXCAMBION.** In Scotch law. Exchange. 1 *Forbes' Inst.* part 2, p. 173.

**EXCAMBIUM, Escambium, Cambium.** L. Lat. In old English law. Exchange of lands. 4 *Co.* 121. The word implied a condition and also a warranty. *Id. ibid.*

Exchange of money. *Molloy de Jur. Mar.* 313.

A recompense or equivalent in value. 1 *Reeves' Hist.* 442, 447. 3 *Id.* 14. See *Escambium*.

**EXCEPCION.** L. Fr. An exception, or plea. *Britt.* c. 48.

**EXCEPTA DIGNITATE REGALI.** Lat. Saving the royal dignity. 1 *Bl. Com.* 205.

**EXCEPTIO.** Lat. [from *excipere*, to except or take out.] In the Roman law. An exception. In a general sense,—a judicial allegation opposed by a defendant to the plaintiff's action; (*judicialis quædam allegatio reo competens adversus actionem*.) *Calv. Lex. Jur.* citing *Hotoman*.—A stop or stay to an action opposed by the defendant. *Cowell. Hallifax Anal.* b. 3, ch. 5. Answering to the defence or plea of the common law.—An allegation and defence of a defendant by which the plaintiff's claim or complaint is defeated, either according to strict law, or upon grounds of equity; (*omnis rei allegatio ac defensio, qua intentio actoris vel ipso jure, vel ob æquitatem eliditur*.) *Heinecc. Elem. Jur. Civ.* lib. 4, tit. 13, § 1277.

In a stricter sense,—the exclusion of an action that lay in strict law, on grounds of equity, (*actionis jure stricto competentis ob æquitatem exclusio*.) *Heinecc. El. J. C. ub. sup.*—A kind of limitation of an action, by which it was shown that the action though otherwise just, did not lie in the particular case. *Calv. Lex. Jur.* citing *Gœddæus de Verb. Signif.*—A species of defence allowed in cases where, though the action, as brought by the plaintiff was in itself just; yet it was unjust as against the particular party sued, (*licet ipsa persecutio, quæ actor experitur, justa sit, tamen iniqua sit adversus eum cum quo agitur*.) *Inst.* 4. 13. pr.—A mode of defence to an action, consisting of facts, which although they did not, *ipso jure*, destroy the right of action, served to protect the defendant upon equitable grounds.\* Thus, if a person, under the influence of fear, deception or mistake, made a promise to another which he ought not to have made, he was nevertheless bound according to the law, (*jure civili*, that is according to the strict rule of law,) to fulfil such promise, and was liable to an action to enforce it; but as it was unjust that he should be condemned, he was allowed to plead the facts of the case by way of *exception*, so as to defeat the action, (*ad impugnandam actionem*.) *Inst.* 4. 13. 1. The exception in these cases was called *exceptio metûs causa, exceptio doli mali*, &c. *Id. ibid.* See *Dig.* 44. 1 & 4. 1 *Mackeld. Civ. Law*, 207, § 204. *Id.* 209, § 206, and note.

These *exceptions* of the Roman law were originally *exceptions*, in the literal meaning of the term, that is, they were allowed by the prætor on the ground that the facts of the particular case constituted, in equity, an *exception* to the general rule of law, of which the defendant might avail himself.\* 1 *Mackeld. Civ. Law, ub. sup.* In the time

of Justinian, however, they had lost this original signification; nor has this sense of *exceptio* been revived in modern times. And yet it may be remarked that the whole of the modern system of equitable relief is essentially a system of *exception*. One of the most eminent of American statesmen and jurists has observed that the great and primary use of a court of equity is to give relief in extraordinary cases, which are *exceptions* to general rules; and that, though the principles by which that relief is governed are now reduced to a regular system, it is not the less true that they are, in the main, applicable to *special* circumstances, which form *exceptions* to general rules. *Federalist*, No. 83, by Hamilton.

**EXCEPTIO.** Lat. In modern civil law. Any objection of a defendant by which he alleges a *new fact*, in order to defend himself against the action; as distinguished from a simple *denial* of the facts alleged by the plaintiff. 1 *Mackeld. Civ. Law*, 207, § 204. Answering to the *plea in confession and avoidance*, in the common law.

**EXCEPTIO.** L. Lat. [L. Fr. *exception*.] In the early common law. The defendant's answer to the plaintiff's declaration, (*narratio*, or *intentio*;) the first pleading in an action on the part of the defendant; a plea. Defined by Bracton to be *actionis elisio, per quam actio perimitur vel differtur*; (the defeating of an action, by which the action is either destroyed or deferred.) *Bract.* fol. 399 b. A term very frequently employed by this writer, who devotes an entire division of his great work (the fifth tract of the fifth book, *De exceptionibus*), to the consideration of this kind of pleading. It is obviously borrowed, with its leading divisions, from the Roman law, (*supra*;) but is considerably modified and enlarged in its application to English jurisprudence. *Id. ibid.* *Steph. Plead.* Appendix, Note (35).

*Exceptio* was also used in the canon law, to denote the second pleading in an action. *Corv. Jus. Canon.* lib. iii. tit. 32.

**Exceptio ejus rei cuius petitur dissolutio nulla est.** A plea of that matter, the dissolution of which is sought [by the action] is null, [or of no effect.] *Jenk. Cent.* 37, case 71.

**Exceptio nulla est versus actionem quæ exceptionem perimit.** There is [can be] no plea against an action which destroys [the matter of] the plea. *Jenk. Cent.* 106, case 2.

**Non potest adduci exceptio ejusdem rei,**

**cujus petitur dissolutio.** A plea of the same matter, the dissolution of which is sought [by the action] cannot be brought forward. *Bacon's Max.* 6, reg. 2. It were impertinent and contrary in itself, for the law to allow of a plea in bar of such matter as is to be defeated by the same suit; for it is included, otherwise a man should never come to the end and effect of his suit, but be cut off in the way. *Id. ibid.*

**EXCEPTIO.** L. Lat. In old practice. An exception taken by a party at the trial of a cause. *Stat. Westm.* 2, c. 31.

**EXCEPTIO.** L. Lat. In old conveying. An exception in a deed, release, &c. **Exceptio semper ultime ponenda est.** An exception should always be put last. 9 *Co.* 53.

**EXCEPTIO AD BREVE PROSTER-  
NENDUM.** L. Lat. [L. Fr. *exception pur  
breve abatre*.] In old pleading. An exception or plea to overthrow or abate the writ; a plea in abatement. *Bract.* fol. 413. *Britt.* c. 48. *Steph. Pl.* Appendix, Note (22).

**EXCEPTIO DILATORIA.** Lat. In the civil law. A dilatory exception; called also *temporalis*, (temporary;) one which defeated the action for a time, (*quæ ad tempus nocet*;) and created delay, (*et temporis dilationem tribuit*); such as an agreement not to sue within a certain time, as five years. *Inst.* 4. 13. 10. See *Dig.* 44. 1. 3.

In the common law. A dilatory plea. *Bract.* fol. 240, 399 b, 421 b. See *Dilatory plea*.

**EXCEPTIO DOLI MALI.** Lat. In the civil law. An exception or plea of fraud. *Inst.* 4. 13. 1, 9. *Bract.* fol. 100 b.

**EXCEPTIO IN FACTUM.** Lat. In the civil law. An exception on the fact; an exception or plea founded on the peculiar circumstances of the case. *Inst.* 4. 13. 1. *Calv. Lex. Jur.*

**EXCEPTIO JURISJURANDI.** Lat. In the civil law. An exception of oath; an exception or plea that the matter had been sworn to. *Inst.* 4. 13. 4. This kind of exception was allowed where a debtor, at the instance of his creditor, (*creditor deferente*;) had sworn that nothing was due the latter, and had notwithstanding been sued by him. *Id. ibid.*

**EXCEPTIO METUS.** Lat. In the

civil law. An exception or plea of fear or compulsion. *Inst.* 4. 13. 1, 9. *Bract.* fol. 100 b. Answering to the modern plea of duress. See *Duress*.

**EXCEPTIO PACTI CONVENTI.** Lat. In the civil law. An exception of compact; an exception or plea that the plaintiff had agreed not to sue. *Inst.* 4. 13. 3.

**EXCEPTIO PECUNIÆ NON NUMERATÆ.** Lat. An exception or plea of money not paid; a defence allowed a party where he was sued on a promise to repay money that he had never received. *Inst.* 4. 13. 2. See *Pecunia non numerata*.

**EXCEPTIO PEREMPTORIA.** Lat. In the civil law. A peremptory exception; called also *perpetua*, (perpetual); one which forever destroyed the subject matter or ground of the action, (*quæ semper rem de qua agitur perimit*); such as the *exceptio doli mali*, the *exceptio metus*, &c. *Inst.* 4. 13. 9. See *Dig.* 44. 1. 3.

In the common law. A peremptory plea; a plea in bar. *Bract.* fol. 240, 399 b.

**EXCEPTIO REI JUDICATÆ.** Lat. In the civil law. An exception or plea of matter adjudged; a plea that the subject matter of the action had been determined in a previous action. *Inst.* 4. 13. 5.

This term is adopted by Bracton, and is constantly used in modern law to denote a defence founded upon a previous adjudication of the same matter. *Bract.* fol. 100 b, 177. 2 *Kent's Com.* 120, and note. *Story's Conf. of Laws*, § 584. A plea of a former recovery, or judgment. See *Res judicata*.

**EXCEPTIO REI VENDITÆ ET TRADITÆ.** Lat. In the civil law. An exception or plea that the article claimed in an action was sold and delivered to the defendant.\* 1 *Mackeld. Civ. Law*, 315, § 291. *Calv. Lex. Jur.*

**EXCEPTIO TEMPORIS.** Lat. In the civil law. An exception or plea of time, or lapse of time; that is, that the action had not been brought within the time limited by law.\* 1 *Mackeld. Civ. Law*, 200, § 200. Answering to the modern plea of the statute of limitations. See *Limitation*.

**EXCEPTION.** In practice. An objection in writing taken in the course of an action; as to bail or security put in by one of the parties; to an opinion of a judge expressed on the trial of a cause; or to a

pleading or master's report in chancery. See *infra*.

**EXCEPTION TO BAIL.** In practice. An objection on the part of the plaintiff to the special bail put in by a defendant in an action at law, on the ground of their insufficiency. 1 *Tidd's Pr.* 255. 1 *Arch. Pr.* 105. It is made by endorsing the exception on the bail piece on file, and giving written notice of such exception to the defendant or his attorney. *Id. ibid.*

**EXCEPTION ON TRIAL.** In practice. An exception taken by the counsel of a party, on the trial of a cause, to a decision made by the judge in the course of the trial, or to an opinion expressed or direction given in his charge to the jury; and usually for the purpose either of moving for a new trial, or of bringing a writ of error. *Steph. Pl.* 89. 2 *Tidd's Pr.* 862. 1 *Arch. Pr.* 210. The exception is made orally, and a minute or note of it taken in writing on the trial; and it is afterwards formally entered and engrossed in the shape of a bill of exceptions. See *Bill of Exceptions*.

**EXCEPTION.** In equity practice. A formal written statement of objections to a pleading, or master's report.\* The usual grounds of exception to a pleading are scandal, impertinence and insufficiency. 1 *Daniell's Chanc. Pr.* (Perkins' ed.) 397, 401, 402. 2 *Id.* 872, 1490. *Mitford's Chanc. Pl.* 315. (376, Moulton's ed. and notes.) *Story's Eq. Pl.* § 864.

**EXCEPTION.** In conveyancing. A clause in a deed whereby the grantor, lessor, &c., *excepts* something out of that which he has before granted, (as ground out of a manor, a room out of a house, &c.,) by which means it is severed from the things granted, and does not pass by the deed.\* *Co. Litt.* 47 a. *Shep. Touch.* 77. The apt words of exception in Latin, were *exceptis, salvo, præter*, and the like.

The distinction between an exception and a reservation is, that an *exception* is always of part of the thing granted, and of a thing *in esse*; a *reservation* is always of a thing not *in esse*, but newly created or reserved out of the land or tenement demised. *Co. Litt.* 47 a. 4 *Kent's Com.* \*468. It has been also said that there is a diversity between an exception and a saving, for an exception exempts clearly, but a saving goes to the matters touched and does not exempt. *Plowd.* 361.

**EXCEPTIS.** Lat. In old conveyancing. Excepting; excepted. One of the apt words for denoting an exception in a deed. *Exceptis præ-exceptis*; excepting what was before excepted; except as above excepted. *Towns. Pl.* 21.

**EXCHANGE.** [L. Lat. *excambium*, L. Fr. *exchange*.] In conveyancing. A mutual grant of equal interests in lands, the one in exchange, or consideration for the other; one of the species of primary or original conveyances at common law, formerly of very frequent occurrence. The estates exchanged must be *equal* in quantity of interest, as fee simple for fee simple, a lease for twenty years for a lease for twenty [or thirty] years, and the like, but the quantity of value is immaterial. The word "*exchange*" must always be used in this conveyance, it being so individually requisite and appropriated by law to this case, that it cannot be supplied by any other word, or expressed by any circumlocution. *Shep. Touch.* 289, 294. 2 *Bl. Com.* 323. *Litt. sect.* 64, 65. *Co. Litt.* 50, 51. 1 *Steph. Com.* 477.

**EXCHANGE OF GOODS.** A commutation, transmutation or transfer of goods for other goods, as distinguished from *sale*, which is a transfer of goods for money. 2 *Bl. Com.* 446. 2 *Steph. Com.* 120.

**EXCHEQUER.** [L. Fr. *eschiquier*, *eschiquer*, *eschequer*; L. Lat. *scaccarium*; from Ital. *scacco*, a chess board, or Germ. *schatz*, a treasure.] An establishment of very remote antiquity in England, consisting of two divisions; the first being the office of the receipt of the exchequer, for collection of the royal revenue; the second being a court for the administration of justice. 4 *Inst.* 103. 2 *Steph. Com.* 544. It is said to be called the exchequer from the *checked cloth*, resembling a chess board, which covers [or once covered] the table there, and on which, when certain of the king's accounts were made up, the sums were marked and scored with counters. 3 *Bl. Com.* 44. As an office of revenue, it has recently been newly organized by statute 4 & 5 Will. IV. c. 15. 2 *Steph. Com.* 544. The exchequer is said to have been originally divided into eight distinct courts. 2 *Chitt. Gen. Pract.* 389.

**EXCHEQUER, COURT OF.** One of the three superior courts of law in England, (inferior, however, in rank to both the Queen's Bench and the Common Pleas;) originally intended principally to order the

revenues of the crown, and to recover the king's debts and duties, but which has long possessed the character of an ordinary court of justice between subject and subject. 3 *Bl. Com.* 44. 3 *Steph. Com.* 400, 401. It was formerly a court both of law and equity, but the equitable jurisdiction was recently taken away by statute 5 Vict. c. 5, and it is now therefore a court of revenue and a court of common law, only. In the former capacity, it ascertains and enforces, by proceedings appropriate to the case, the proprietary rights of the crown against the subjects of the realm; in the latter, it administers redress between subject and subject, in all actions whatever, except real actions. It is a court of record, and its judges are five in number, consisting of one chief and four puisne *barons*, as, in this court, the judges are termed. *Id. ibid.* 2 *Id.* 544, note.

**EXCHEQUER BILLS.** Bills of credit issued in England by authority of parliament. *Brande.* Instruments issued at the exchequer, under the authority, (for the most part,) of acts of parliament passed for the purpose, and containing an engagement, on the part of the government, for repayment of the principal sums advanced with interest. 2 *Steph. Com.* 586.

**EXCHEQUER CHAMBER, Court of.** A court of appeals in England, established to correct the errors of the three superior courts of common law, (the Queen's Bench, Common Pleas and Exchequer,) consisting of any two of these courts, sitting as a court of error to revise the judgment of the third. This is the modern constitution of the court by statutes 11 Geo. IV. and 1 Will. IV. c. 70, s. 8. 3 *Steph. Com.* 419. It also exists as a court of mere debate, such causes from the other courts being sometimes adjourned into it, as the judges, upon argument, find to be of great weight and difficulty, before any judgment is given upon them in the court below. *Id. ibid.* 3 *Bl. Com.* 56.

**EXCISE.** [from Belg. *accise*, tribute.] An inland imposition upon commodities, charged in most cases on the manufacturer. 2 *Steph. Com.* 579.—A duty or tax laid on certain articles produced and consumed at home. *Wharton's Lex.* 1 *Bl. Com.* 318. It includes also the duties on licenses and auction sales. 2 *Steph. Com.* 581. 3 *Id.* 314.

**EXCLUSA.** L. Lat. In old English law. A sluice; a structure for carrying off water, especially such as is dammed or

pent up, as in a mill pond or fish pond. *Cowell. Reg. Orig.* 96. In old English, a *schuse*. *Spelman.*

In old European law. A place in a stream made narrow for the purpose of fishing; a wear. *Spelman.*

**EXCLUSAGIUM, *Slusagium.*** L. Lat. A sluice or sluisage. *Cowell.* 1 *Mon. Angl.* 398, 868, cited *ibid.*

**EXCOMMENGE.** L. Fr. [Lat. *excommunicatus.*] Excommunicated. *Litt.* sect. 201. *Co. Litt.* 133 b.

**EXCOMMENGEMENT.** L. Fr. [L. Lat. *excommunicatio.*] Excommunication. *Britt.* c. 49. *Bro. Abr.* Excommengement. *Stat.* 23 *Hen.* VIII. c. 3. *Gilb. C. Pleas.* 202.

**EXCOMMUNICATION.** [L. Lat. *excommunicatio*; from *ex*, from, and *communio*, communion.] In English law. An ecclesiastical interdict or censure, by which a man is cut off from communion with his church. It is described to be twofold, the less and the greater. The less excommunication is that by which a party is excluded from the participation of the sacraments; the greater proceeds further, and excludes him not only from these, but also from the company of all christians. *Co. Litt.* 133 b. 3 *Bl. Com.* 101. Formerly, too, an excommunicated man was disabled to do any act, that was required to be done by a *probus et legalis homo*. He could not serve upon juries; could not be a witness in any court, and, what was worst of all, could not bring an action, either real or personal, to recover lands or money due to him. But now, by statute 58 *Geo.* III. c. 127, s. 3, no person who shall be pronounced excommunicate, shall incur thereby any civil penalty or incapacity whatever, save such imprisonment, not exceeding six months, as the court so excommunicating such person shall pronounce. 3 *Steph. Com.* 721. 3 *Bl. Com.* 102.

**EXCUSABLE HOMICIDE.** In criminal law. That kind of homicide which the law excuses from the guilt of felony, though in strictness it judges it deserving of some little degree of punishment. It is of two kinds, homicide *per infortunium*, by misadventure; and homicide *se defendendo*, in self-defence, upon a sudden affray. 4 *Bl. Com.* 182. 4 *Steph. Com.* 101. See *Homicide.*

**Excusant aut extenuant delictum in capi-**

**culibus, quod non operatur idem in civilibus.** That excuses or extenuates an offence in capital cases, which does not operate the same in cases of civil injuries. *Bacon's Max.* 36, reg. 7. In capital causes, *in favorem vite*, the law will not punish in so high a degree, except the malice of the will and intention appear; but in civil trespasses and injuries that are of an inferior nature, the law doth rather consider the damage of the party wronged, than the malice of him that was the wrong doer; and therefore, the law makes a difference between killing a man upon malice forethought, and upon present heat. But if I give a man slanderous words, whereby I damnify him in his name and credit, it is not material whether I use them upon sudden choler and provocation, or of set malice, but, in an action upon the case, I shall render damages alike. *Id. ibid.*

**EXCUSSIO.** Lat. [from *excutere*, to shake out, to search.] In the civil law. A diligent prosecution of a remedy against a debtor; the exhausting of a remedy against a principal debtor, before resorting to his sureties. Translated *discussion*, (q. v.)

In old English law. Rescue or rescous. *Spelman.*

**EXCUTERE.** Lat. In the civil law. To search thoroughly; to prosecute a remedy against one to the uttermost, especially against a principal debtor; to search *ad peram et sacculum*, to the last farthing. *Calv. Lex. Jur.*

**EXECUCYON.** L. Fr. Execution. *Britt.* fol. 1 b.

**EXECUTE.** To complete, finish, or perfect; to make effectual or operative.\* A deed is not complete, and has no operation or effect, until *executed*, that is, signed sealed and delivered by the party making it. See *Execution.*

To carry into effect; to make effectual; as by complying with, or acting under a legal order or authority; to obey the writ or mandate of a court. See *Execution.*

A statute is said to *execute* a use, where it transmutes the equitable interest of *cestuy que use* into a legal estate of the same nature, and makes him tenant of the land accordingly, in lieu of the feoffee to uses or trustee, whose estate, on the other hand, is at the same moment annihilated. 1 *Steph. Com.* 339.

**EXECUTED.** Completed; carried into full effect; already done or performed;

taking effect immediately ; now in existence or in possession ; conveying an immediate right or possession. The opposite of *executory*. See *infra*, and see *Executory*.

**EXECUTED CONSIDERATION.** A consideration performed prior to the promise upon which it is founded, and which, to be valid, must have been at the precedent request of the promiser.\* As if I bail a man's servant, at the master's request, and the latter afterwards promises to indemnify me ; this is an executed consideration.\* 2 *Steph. Com.* 113.

**EXECUTED CONTRACT.** A contract which transfers the possession of a thing together with the right ; a contract which conveys a chose in possession, as distinguished from a chose in action. 2 *Bl. Com.* 443. 2 *Steph. Com.* 112.—A contract where nothing remains to be done by either party, and where the transaction is completed at the moment that the agreement is made, as where an article is sold and delivered, and payment therefor is made on the spot. *Story on Contracts*, § 18.

**EXECUTED ESTATE.** An estate in possession, by which a present interest passes to, and resides in the tenant, not depending on any subsequent circumstance or contingency. 2 *Bl. Com.* 162.

**EXECUTED REMAINDER.** A remainder by which a present interest passes to the party, though to be enjoyed in futuro. 2 *Bl. Com.* 168. See *Vested Remainder*.

**EXECUTED TRUST.** A trust is so called in respect to its creation, when the transaction by which it is created is complete, and in respect to its execution, when no further act is necessary to be done by the trustee to give effect to it.\* 2 *Crabb's Real Prop.* 577, 578, §§ 1806, 1807. See *White's Lead. Eq. Cases*, 1—31, and *Am. ed. note*.

**EXECUTED USE.** A use to which the legal possession or estate is transferred or annexed by statute ; a use transferred into possession.\* 2 *Crabb's Real Prop.* 478, § 1654. 1 *Steph. Com.* 339.

**EXECUTIO.** Lat. [from *exequi*, or *exsequi*, to follow up.] The doing or following up of a thing ; the doing a thing completely or thoroughly ; management or administration. See *Executio bonorum*.

**EXECUTIO.** L. Lat. In old practice. Execution ; the final process in an action. See *Execution*.

**Executio est finis et fructus legis.** Execution is the end and fruit of the law. *Co. Litt.* 289. An execution is the end of the law. It gives the successful party the fruits of his judgment. Marshall, C. J., 9 *Peters' R.* 28. It is the end in both of the English senses of the word ; being not only the final proceeding in an action, but the object also for which the action is prosecuted, putting the party into actual possession of the lands, goods, or money to which he is entitled.\*

**Executio juris non habet injuriam.** The execution of the law does not work a wrong. 2 *Inst.* 482. The imprisonment of a party in the execution and by virtue of lawful process, is not such an act as can be pleaded in avoidance of a contract entered into while under its coercion.\* *Broom's Max.* 57.

**EXECUTIO BONORUM.** L. Lat. Management or administration of goods. *Ad ecclesiam et ad amicos pertinebit executio bonorum* ; the execution of the goods shall belong to the church and to the friends of the deceased. *Bract.* fol. 60 b.

**EXECUTION.** [Lat. *executio* ; L. Fr. *excecucion*.] The completion of an act or proceeding, by which it is rendered operative or effectual ; a following out or carrying into effect ; an enforcement. See *infra*.

**EXECUTION.** In practice. The act or mode of putting the sentence of the law in force, or of carrying into effect the judgment or decree of a court.\* 3 *Bl. Com.* 412. A judicial writ, (otherwise termed *final process*,) founded on a judgment obtained in a civil court, and issued in behalf of the party recovering such judgment, for the purpose of obtaining the satisfaction or full benefit of it.\* Called by Lord Coke "the life of the law," and "the fruit and life of every suit." 5 *Co.* 89, 91. There are various kinds of this process, but the two most usual in practice are the *feri facias*, and the *capias ad satisfaciendum*. See *Fieri Facias*, *Capias ad satisfaciendum*, *Levari facias*, *Extendi facias*, *Elegit*, *Habere facias possessionem*, *De retorno habendo*.

**EXECUTION.** In criminal law. The carrying into effect the sentence of the law by the infliction of capital punishment. 4 *Bl. Com.* 403. 4 *Steph. Com.* 470.

**EXECUTION.** In conveyancing. The formality of signing, sealing and delivery by the party making a deed, or of signing and publication by the party making a will, in the presence of witnesses; by which it is rendered complete and operative.\* 4 *Kent's Com.* 450. *Id.* 513—516, and notes. 2 *Bl. Com.* 376.

**EXECUTOR.** L. Lat. [from *exequi*, or *exsequi*, to follow up, execute or perform.] In old English law. A person appointed or authorized to execute or perform a duty or trust; especially to manage and dispose of the property or estate of a deceased person; an executor.\*

*Executor a lege constitutus*; an executor appointed by law; the ordinary of the diocese. 1 *Williams on Exec.* 185.

*Executor ab episcopo constitutus*, or *executor datus*; an executor appointed by the bishop; an administrator to an intestate. *Id. ibid.*

*Executor a testatore constitutus*; an executor appointed by a testator. *Id. ibid.* Otherwise termed *executor testamentarius*; a testamentary executor. *Id. ibid.* This is the modern sense of the word, commonly expressed in the old books by the single word, *executor*. *Glanv. lib. 7, c. 6. Bract. fol. 20, 61.*

**EXECUTOR.** [L. Lat. *executor*; L. Fr. *executour*.] A person appointed by a testator, in his last will and testament, to carry it into effect or *execution* after his decease, and to dispose of his property according to the tenor of the will.\* *Wood's Inst.* 310. *Cowell. Blount. Whishaw.*—A person appointed by a testator, and whose appointment is confirmed by the proper court, to execute his will, and to represent him in his personal rights and liabilities. *Brande.* He to whom another man commits by will the execution of his last will and testament. 2 *Bl. Com.* 503. See 1 *Williams on Exec.* 185, *et seq.*

This word has been adopted without change from the Latin of the earliest writers on English law. *Glanv. lib. 7, c. 6. Bract. fol. 20, 61. Stat. Westm. 2, c. 19.* See *supra.* Lord Hardwicke, in *Androvin v. Poilblanc*, calls it a "barbarous term," unknown to the civil law, the proper term in that law, as to goods, being *hæres testamentarius*. 3 *Atk.* 299, 301.

**EXECUTOR DE SON TORT.** L. Fr. An executor of his [own] wrong; an executor by his own wrongful act.\* A stranger who takes upon himself to act as executor, without any just authority, (as by intermed-

dling with the goods of the deceased,) is so called, and is liable to all the trouble of an executorship, without any of the profits or advantages. 2 *Bl. Com.* 507. But merely doing acts of necessity or humanity, as locking up the goods, or burying the corpse of the deceased, will not amount to such an intermeddling, as will charge a man as executor of his own wrong. *Id. ibid.* See 1 *Williams on Exec.* 210, *et seq.*

**EXECUTOR.** Lat. In the civil law. A ministerial officer who executed or carried into effect the judgment or sentence in a cause. *Calv. Lex. Jur.* citing *Prateius* and *Brissonius*. Otherwise called *executor litis*. *Inst.* 4. 6. 24, 25.

**EXECUTORY.** That which is to be executed or performed; relating to the future; depending upon a future event, or act. See *infra*.

**EXECUTORY CONSIDERATION.** A consideration which is to be performed after the making of the promise on which it is founded.\* 2 *Steph. Com.* 113.

**EXECUTORY CONTRACT.** A contract which is to be executed at some future time, and which conveys only a *chose in action*. 2 *Bl. Com.* 443. 2 *Kent's Com.* 511, 512, note. See *Executed contract*.

**EXECUTORY DEVISE.** In a general sense. A devise of a future interest in lands, not to take effect at the testator's death, but limited to arise and vest upon some future contingency. 1 *Fearne on Remainders*, 382. A disposition of lands by will, by which no estate vests at the death of the devisor, but only on some future contingency.\* 2 *Bl. Com.* 172.

In a stricter sense, a limitation by will of a future contingent interest in lands, contrary to the rules of the common law.\* 4 *Kent's Com.* 263. 1 *Steph. Com.* 564.—A limitation by will of a future estate or interest in land, which cannot, consistently with the rules of law, take effect as a remainder. 2 *Powell on Dev.* (by Jarman,) 237. *Lewis on Perpetuity*, 71, 72.

**EXECUTORY ESTATE.** An estate depending upon some future circumstance or contingency, which must happen before any interest passes.\* 2 *Bl. Com.* 162.

**EXECUTORY REMAINDER.** The same as a contingent remainder. See *Contingent Remainder*.

**EXECUTORY TRUST.** A trust is so called when the transaction by which it is created is only in *feri*, or rests in covenant; or where some further act is necessary to be done by the author of the trust, or the trustee, to give effect to it.\* 2 *Crabb's Real Prop.* 577, 578, §§ 1806, 1807. *White's Lead. Eq. Cases*, 18.

**EXECUTORY.** In Scotch law. The personal estate of a deceased person, falling under the distribution of the executor. *Scotch Dict.*

**EXECUTOUR.** L. Fr. An executor. *Britt.* c. 28, 64.

**EXECUTRIX.** L. Lat. & Eng. A female executor. See *Executor*.

**EXEMPLIFICATION.** [L. Lat. *exemplificatio*; from *exemplum*, a copy, and *facere*, to make.] A certified transcript, under seal, of a record.\* An exemplification of letters patent is a certified transcript of the enrolment, under the great seal. *Cowell. Burton's Real Prop.* 160. 1 *Archb. Pr.* 159, 162. The term is confined to matters of record. 3 *Inst.* 173. 5 *Co.* 52, *Page's Case.* *Cowell.*

**EXEMPLUM.** Lat. In the civil law. A copy. *Calv. Lex. Jur.*

**EXEMPLUM.** Lat. An example; an instance. *Exempla illustrant non restringunt legem.* Examples illustrate the law; do not restrict it. *Co. Litt.* 24 a.

**EXEQUATUR.** Lat. (Let him execute or perform his office.) The official recognition of a person in the character of consul or commercial agent, authorizing him to exercise his power. *Wharton's Lex.*

**EXERCITALIS.** L. Lat. [from *exercitus*, an army.] In feudal and old European law. A soldier; a vassal or feudatory. *Spelman. Calv. de Verb. Feud.*

**EXERCITOR NAVIS.** Lat. In the civil law. The employer of a vessel; the person who sent a vessel to sea at his own risk, and received all her earnings; (*ad quem quotidianus navis quaestus pertinet; ad quem obventiones et redditus omnes perveniunt.*) *Inst.* 4. 5. 3. *Id.* 4. 7. 2. *Dig.* 14. 1. 1. 15. 3 *Kent's Com.* 161, note (b). *Molloy De Jur. Mar.* 243. *Story on Agency*, §§ 36, 317. The *exercitor* was bound for the acts of the master *ex contractu*, and *ex delicto.* *Voet. Com. ad*

*Pand.* 14. 1. 7. 3 *Kent's Com. ub. sup. Story on Agency*, § 163.

**EXERCITORIA ACTIO.** Lat. In the civil law. An action which lay against the employer of a vessel, (*exercitor navis*), for the contracts made by the master. *Inst.* 4. 7. 2. 3 *Kent's Com.* 161.

**EXERCITUALE.** L. Lat. [from *exercitus*, an army.] In old English law. A heriot. *LL. Edw. Conf.* 1. *Cowell.* So called as being anciently paid only in arms or military accoutrements. *Id.* See *Heriot*.

**EXERCITUS.** L. Lat. In old European law. An army; an armed force. A collection of thirty-five men and upwards. *LL. Inæ, apud Spelman.*

A gathering of forty-two armed men. *L. Botor.* tit. 3, c. 8.

A meeting of four men. *LL. Longobard.* lib. 1, tit. 17, c. 1. *Spelman.*

**EXFESTUCARE.** L. Lat. [from *ex*, from or off, and *festuca*, a wand.] In feudal and old European law. To divest oneself of the possession of an estate, honor, dignity or any other thing; anciently expressed by the ceremony of delivering a wand or staff. *Spelman. Calv. de Verb. Feud.*

**EXFREDIARE.** L. Lat. [from *ex*, priv. and Sax. *frede*, *frith*, peace.] In old English law. To break the peace; to commit open violence. *Cowell. LL. Hen. I.* c. 31, cited *ibid.*

**EXHÆREDARE.** Lat. [from *exhæres*, q. v.] In the civil law. To disinherit; to exclude from inheriting. *Inst.* 2. 13. pr. In Scotch law, to *exheredate*, (q. v.)

**EXHEREDATE.** In Scotch law. To disinherit; to exclude from inheriting. 1 *Kames' Equity*, 247.

**EXHAEREDATIO.** Lat. [from *exhæredare*, q. v.] In the civil law. Disinheritance; a disinheriting. *Inst.* 2. 23. tit. *Bract.* fol. 388. An exclusion from the lawful inheritance. *Heinecc. Elem. Jur. Civ.* lib. 2, tit. 13, § 528.

In the common law. Disinheritance; an injury done to one who has the inheritance, particularly to a remainder-man or reversioner. See *Ad exhæredationem*.

**EXHÆRES.** Lat. [from *ex*, priv. and *hæres*, an heir.] In the civil law. One who is excluded from being an heir; a person disinherited. *Inst.* 2. 13. pr. A child



was disinherited by the following form of words: *Titius filius meus exhaeres esto*; let Titius, my son, be disinherited. *Id. ibid.* Adopted by Bracton. *Bract. fol. 383.*

**EXHIBERE.** Lat. [from *ex*, out, and *habere*, to have.] In the civil law. To have out; to show openly; to exhibit; to present or produce a thing so that it may be seen and handled. *Calv. Lex. Jur.* citing *Gæddæus. Exhibere est præsentiam corporis præbere*; to exhibit is to furnish the presence of the body; to present a thing or person corporeally. *Dig. 50. 16. 22.*

To **EXHIBIT.** In practice. To present or show in legal form; to present to a court; to produce or show in or before a court or judicial officer.\* See *Exhibit.*

**EXHIBIT.** [Lat. *exhibitum*, (from *exhibere*, q. v.) shown to.] In practice. Any writing which, on the examination of a witness before an examiner, or commissioner, is *exhibited*, or *shown* to the witness to be proved, and on the back of which, the examiner or commissioner certifies that such writing was *shown* to the witness, at the time of his examination, and by him sworn to. *Jacob. Gray's Chanc. Pr. 98.* Where there are several, they are generally distinguished by the letters of the alphabet, as "exhibit A.," "exhibit B.," &c.

**EXHIBITIO BILLÆ.** L. Lat. (The exhibition of the bill.) In old practice. A phrase formerly used in pleading, and generally equivalent to "*the commencement of the suit*;" the suit, (where the proceedings were by bill,) being anciently commenced by the *exhibition* of such a *bill* to the court.

**EXIGENT, or EXIGI FACIAS.** L. Lat. In English practice. A judicial writ made use of in the process of outlawry, commanding the sheriff to *demand* the defendant, (or *cause him to be demanded, exigi faciat*), from county court to county court, until he be outlawed; or, if he appear, then to take and have him before the court on a day certain in term, to answer to the plaintiff's action. 1 *Tidd's Pr. 132.* 3 *Bl. Com. 283, 284.* *Archb. N. Prac. 485.* Now regulated by statute 2 Will. IV. c. 39.

**EXIGENTER.** [L. Lat. *exigendarius*.] An officer of the English court of common pleas, whose duty it was to make out the *exigents* and proclamations, in the process of outlawry. *Cowell. 1 Archb. Pr. 11.* Abolished by statute 7 Will. IV. and 1 Vict. c. 30. *Holthouse.*

**EXIGI FACIAS.** L. Lat. (You cause to be demanded.) Another name of the writ of *exigent*; being the two emphatic words of that writ. *Reg. Jud. 2.*

**EXILE.** [Lat. *exilium*.] Banishment; a driving out or sending away of persons; a species of waste committed by manumitting or ejecting tenants; or so excessive in itself as to have the effect of driving them away.\* See *Exilium*.

**EXILIUM.** L. Lat. [L. Fr. *exil*, *exyl*.] In old English law. Exile or banishment; a driving out, or sending away of persons. A species of waste, anciently classed with *vastum*, (waste proper,) *destructio*, (destruction,) and *venditio*, (sale,) but distinguished from these by having reference to persons (*homines*) only. It was a species of injury done to an estate, by setting free the bondmen (*servi*) or bond-tenants, or by wrongfully ejecting them. *Fleta*, lib. 1. c. 11. *Stat. Marlbridge*, c. 24. Bracton describes it as an aggravated kind of waste done to the injury and disfigurement of the chief messuage and the court or grounds about it, (*ad magnam deformitatem curiæ et capitalis messuagii*), as by pulling down and selling the buildings so as to compel the occupants to leave, (*ut si inhabitatores mansionem habuerint derelictum*), or by cutting down and rooting up trees and orchards. *Bract. fol. 316 b.* 1 *Reeves' Hist. Eng. Law, 386.*

**EXISTENS.** L. Lat. Being. 2 *Stra. 747, 748.*

**EXISTIMATIO.** Lat. In the civil law. The civil reputation which belonged to the Roman citizen, as such. 1 *Mackeld. Civ. Law. 133, § 123.* Called a state or condition of unimpeached dignity or character, (*dignitatis inlæsæ status*;) the highest standing of a Roman citizen. *Dig. 50. 13. 5. 1.* See *Status*.

**EXITUS.** Lat. [from *exire*, to go out, or proceed from.] In old English law and practice. Issue or offspring; a child or children. *Habuit exitum Thomam, &c.*; had issue Thomas. 2 *Mon. Angl. 607.*

Issues, (in the plural;) the rents or profits of land. *Cowell.* Defined by the statute of Westminster, 2, (c. 39,) to include rents, grain in barns, and all moveable things except horse furniture, clothing, and household utensils. See *Issues*.

An issue, in pleading. So called, according to Lord Coke, because "*issuing out of the allegations and pleas of the plain-*

tiff and defendant." *Co. Litt.* 126 a. But properly, because it is the end of the pleading. *Exitus idem est quod finis, sive determinatio placiti*; issue is the same as the end, or determination of the plea. *Year Book*, 21 *Edw.* IV. 35. *Steph. Plead.* Appendix, Note (10.)

The issue or result of an act. *In maleficiis spectatur voluntas et non exitus*; in injuries, the will or motive is regarded, and not the result. *Bract.* fol. 136 b.

An end. *Exitus termini*; the end of a term. *Bract.* fol. 20. An issue, as the end of pleading. See *supra*. See *Issue*.

EXLEGALITAS. L. Lat. [from *exlex*, q. v.] In old English law. Outlawry. *LL. Edw. Conf.* c. 38. *Spelman*.

EXLEGARE. L. Lat. In old English law. To outlaw; to deprive one of the benefit and protection of the law; (*exuere aliquem beneficio legis*.) *Spelman*.

EXLEX. L. Lat. In old English law. An outlaw; *qui est extra legem*; one who is out of the law's protection. *Bract.* fol. 125. *Qui beneficio legis privatur. Spelman*, voc. *Exlegare*.

EXONERETUR. L. Lat. [from *exonerare*, to discharge.] (Let him be discharged.) In practice. An entry made upon a bail piece, where the bail are discharged, either by the surrender of their principal, or otherwise; signifying that the bail are *exonerated*. 1 *Tidd's Pr.* 280, 288.

EXONIER. L. Fr. To excuse. See *Essohier*.

EXPATRIATION. [from Lat. *ex*, from, and *patria*, country.] The removing from, or forsaking one's native country; the renunciation or abjuration of one's native allegiance.\* 2 *Kent's Com.* 43, 49.

*Nemo patriam in qua natus est exuere, nec ligentium debitum ejurare possit.* No man can shake off the country in which he was born, nor abjure the obligation of his allegiance. *Co. Litt.* 129. The principle of this maxim is not settled in American law. 2 *Kent's Com.* 49. 1 *Duer on Ins.* 545. Cowen, J., 5 *Hill's* (N. Y.) *R.* 16, 22.

EXPECTANCY, *Estate in*. An estate the possession of which a person is entitled to have in futuro.\* 1 *Steph. Com.* 289. See *Estate in expectancy*.

EXPECTANT ESTATE. An estate in expectancy. See *Expectancy*.

EXPEDIT. Lat. It is expedient or profitable; it is for the good, benefit or advantage.

*Expedit reipublice ut sit finis litium.* It is for the advantage of the state that there be an end of suits; it is for the public good that actions be brought to a close. *Co. Litt.* 303 b. It is for the general good that some period be put to litigation. 6 *Co.* 7. 9 *Id.* 79.

EXPEDITARE, *Espeallare*. L. Lat. [from *ex*, out, and *pes*, foot.] In old forest law. To cut out the ball, or cut off the claws of a dog's foot; to expeditate, (q. v.) *Spelman. Cowell*.

To cut the foot or root of a tree, so as to occasion it to fall (?) *Fleta*, lib. 2, c. 41, sec. 31.

EXPEDITATE. [from *expeditare*, q. v.] In the forest law. To cut out the ball of dogs' forefeet, to prevent them from running after deer or game. *Cart. de Forest.* c. 16. *Crompt. Jur.* 152. *Manwood*, c. 16. 3 *Bl. Com.* 72. *Spelman*, voc. *Expeditare*.

EXPEDITATION. In forest law. The act or mode of expediting dogs; otherwise called *lawing* (q. v.) 3 *Bl. Com.* 72. *Spelman*, voc. *Expeditare*.

EXPEDITIO. Lat. An expedition; an irregular kind of army. *Spelman*.

EXPEDITIO BREVIS. L. Lat. In old practice. The service of a writ. *Towns. Pl.* 43.

EXPENDITORS. In old English law. Persons who disbursed or expended monies collected by tax, particularly for the repairs of sewers.\* *Cowell*.

EXPENSÆ. Lat. [from *expendere*, to expend.] In the civil law. Expenses or charges. *Expensæ litis*; costs of suit. *Calv. Lex*.

*Victus victori in expensis condemnabitur.* The vanquished party shall be condemned to the victor in the costs, [i. e. adjudged to pay the costs.] *Code*, 3. 1. 13.

*Experientia per varios actus legem facit.* Experience by various or repeated acts, makes law. *Branch's Princ. Co. Litt.* 60.

EXPERIRI. Lat. In the civil law. To sue; to try one's right by law. *Inst.* 2. 6. 9. *Id.* 4. 6. 40. *Id.* 4. 11. pr.

Used in the same sense, with the words *judicio, actione, &c.* *Calv. Lex. Jur.*

**EXPERT.** [L. Lat. *expertus, peritus.*] A skilful or experienced person; a person having skill, experience or peculiar knowledge on certain subjects, or in certain professions; a scientific witness. Persons of this character, when called as witnesses in a cause, are allowed to state their opinions in evidence, contrary to the general rule that the opinion of a witness is not evidence. *Broom's Max.* 422. See *Cuiuslibet in arte sua perite est credendum.* It seems that the rule sometimes allowed to prevail, admitting *experts* to give an opinion, whether a signature is genuine or imitated, is not well established upon authority, and that such testimony is incompetent. *Bronson, C. J., 1 Denio's R.* 343, 346. *1 Penn. R.* 161. *5 B. & A.* 330. *Best on Evid.* 268, § 220. But see *10 Clarke & F.* 193. *Id.* 154. *9 Connecticut R.* 55. *17 Pick. R.* 497.

**EXPLACITARE.** L. Lat. In old English law. To gain a suit, (*litem obtinere*,) to overcome in pleading, (*placitando evincere*.) *Spelman. Will. Malmsh. de Reg. Gest.* lib. 2. c. 13.

**EXPLETAMENTA.** L. Lat. A term used in old European law, corresponding, as *Spelman* conjectures, with the *esplees* (q. v.) of the English law.

**EXPLEES.** [L. Lat. *expletia*, q. v.] The profits of an estate. See *Esplees*.

**EXPLETIA, Explicia.** L. Lat. [from *explere*, to fill or make up; to complete or make perfect.] In old English law. *Esplees*; the profits of land. *Bract.* fol. 40, 44 b. *Excoluit terram, et blada expendit, et redditus et expletia cepit*; he cultivated and sowed the land, and took the rents and *esplees*. *Id.* fol. 50 b, 206 b, 372 b, 373. So called, because the estate is made complete and perfect by reaping the *esplees*, that is, the fruit and commodity thereof. *6 Co.* 58 b.

**EXPLICATIO.** Lat. In the civil law. A pleading corresponding with the surrejoinder of the common law; (*allegatio infirmans supplicationem.*) *Calv. Lex. Jur. Spiegelius*, cited *ibid.* See *Supplicatio*.

**EXPOLIARE, Exspoliare.** Lat. In the civil law. To rob, plunder or spoil. *Expoliatores*; robbers. *Calv. Lex.* To deprive or take away. *Id. Spelman, voc. Effractoress.*

**EXPOSITIO.** Lat. [from *exponere*, to explain or interpret.] Explanation; exposition; interpretation.

*Expositio quæ ex visceribus causæ nascitur, est aptissima et fortissima in lege.* That kind of interpretation which is born [or drawn] from the bowels of a cause, is the aptest and most forcible in the law. *10 Co.* 24. See *Ex visceribus*.

**EXPRESS, EXPRESSED.** [Lat. *expressum, expressa*; from *exprimere*, to declare openly.] Openly declared or signified; distinctly mentioned in words or set down in writing, as distinguished from what is implied by law. See *infra*.

**EXPRESS ABROGATION.** Abrogation by express provision or enactment; the repeal of a law or provision, by a subsequent one, referring directly to it.

**EXPRESS CONSIDERATION.** A consideration distinctly declared by the terms of the contract itself; as where a man contracts to sell his land for a named sum of money.

**EXPRESS CONTRACT.** A contract, the terms of which are openly uttered or declared at the time of making it. *2 Bl. Com.* 443. *2 Steph. Com.* 110.

**EXPRESS WARRANTY.** In conveyancing. A warranty in a deed expressed by particular words, (such as *warrantizo*, I warrant;) as distinguished from that which was implied by law from other words, (such as *dedi*, I have given.) *2 Bl. Com.* 300, 301. See *Dedi*.

In the law of insurance. An agreement expressed in a policy, whereby the assured stipulates that certain facts relating to the risk are or shall be true; or certain acts relating to the same subject have been or shall be done. *1 Phillips on Ins.* 346.

**EXPRESSA.** Lat. [from *exprimere*, to express or declare.] Things or words expressed, or expressly mentioned.

*Expressa nocent, non expressa non nocent.* Things expressed are [may be] prejudicial; things not expressed are not. Express words are sometimes prejudicial, which if omitted had done no harm. *Dig.* 50. 17. 195. See *Calv. Lex. Jur.* A party may sometimes prejudice himself by using words unnecessarily. Another form of this maxim is *Expressa non present quæ non expressa prederunt.* *4 Co.* 73.

**EXPRESSIO.** Lat. [from *exprimere*,

to express.] Expression; distinct mention in words or writing.

**Expressio eorum que tacite insunt nihil operatur.** The expression or express mention of those things which are tacitly implied, avails nothing. 2 *Inst.* 365. Words used to express what the law will imply without them, are mere words of abundance. 5 *Co.* 11. Thus, if land be let to two persons for the term of their lives, this creates a joint tenancy; and if the words "and the survivor of them" are added, they will be mere surplusage, because, by law, the term would go to the survivor.\* *Co. Litt.* 191 a. 4 *B. & Ald.* 306. *Broom's Max.* 286.

**Expressio unius est exclusio alterius.** The expression of one thing is the exclusion of another. The express mention of one thing [person or place] implies the exclusion of another. See **Designatio unius est exclusio alterius.** This is a leading maxim in the construction of deeds, and the foundation of the rule that an implied covenant is in all cases controlled within the limits of an express covenant. 4 *Co.* 80 b. *Broom's Max.* 278, 279, and note. It is a maxim also in the construction of statutes. *Story, J.*, 3 *Story's R.* 87, 89. But it has been held not to apply in construing the Constitution of the United States. *Federalist*, No. 83.

For other applications of this maxim, see 1 *Story's Eq. Jur.* § 102. *Story on Bailm.* § 550. *Story on Partn.* § 209. *Shaw, C. J.*, 2 *Metcalf's R.* 234, 241.

**EXPRESSUM, Expressa.** Lat. [from *exprimere*, to express.] Express; expressed. A thing or word expressly or distinctly mentioned. *Bract.* fol. 18.

**Expressum facit cessare tacitum.** That which is expressed makes that which is implied to cease; [that is, supersedes it, or controls its effect.] Thus, an implied covenant in a deed is in all cases controlled by an express covenant. 4 *Co.* 80. *Broom's Max.* 278. So, in other cases than those of instruments under seal, it is a general rule that parol evidence is inadmissible to show terms upon which the instrument is silent; or, in other words, where there is an express contract between parties, none can be implied. *Id.* 281, and cases cited *ibid.* 2 *Steph. Com.* 112.

**EXPROMISSOR.** Lat. [from *expromittere*, q. v.] In the civil law. One who assumes the debt of another, discharging the first debtor, and making himself originally liable in his place; one who was substituted as a debtor by the process of dele-

gation, (q. v.) *Inst.* 2. 1. 41. *Dig.* 12. 4. 4. *Heinecc. El. Jur. Civ. lib.* 3, tit. 30, § 1015. *Calv. Lex. Jur.*

**EXPROMITTERE.** Lat. In the civil law. To undertake for another, with the view of becoming liable in his place. *Calv. Lex.*

**EXTEND.** [L. Lat. *extendere*; L. Fr. *estendre*.] In English practice. To value the lands or tenements of a person bound by a statute or recognizance which has become forfeited, to their full extended value. 3 *Bl. Com.* 420. *F. N. B.* 131. To execute the writ of *extent* or *extendi facias*, (q. v.) 2 *Tidd's Pr.* 1043, 1044.

This term seems to be considered synonymous with *value*, although the latter word is always used in connexion with it. So, in the oldest forms, both words occur;—*extendere et appreciare*,—*extendi et appreciari*,—*extensio* or *extensio et appreciatio*. *Bract.* fol. 72. *Id.* fol. 75 b. *Reg. Jud.* 2, 32 b. It would appear that its proper original meaning was to lay out land, or to make an inventory of it under certain heads, as preparatory to appraisement. This may be gathered from the use of the term in *Bracton*, as applied to the partition of estates. See *Extendere, Extensores, Extensio*.

**EXTENDERE.** L. Lat. In old English practice. To appraise or value. See *Extend*.

To lay out, survey, or make an inventory of. *Extendere et appreciare*; to lay out and appraise. *Bract.* fol. 72. See *Britt.* c. 71.

To set off, or assign. *Extenderunt tali xx. libras terras pro decem*; they set off to such a one twenty pound-lands instead of ten. *Bract.* fol. 75.

*Extendere se*; to amount to. *Ad quam summam damna se extendunt occasione, &c.*; to what sum the damages amount, on occasion, &c. *Reg. Jud.* 58 b. See *Attingere*.

**EXTENDI FACIAS.** L. Lat. (You cause to be extended.) In English practice. The name of a writ of execution, (derived from its two emphatic words;) more commonly called an *extent*. 2 *Tidd's Pr.* 1043. 4 *Steph. Com.* 43. See *Extent*.

**EXTENSORES.** L. Lat. [L. Fr. *estendours*.] In old English law. Extenders or appraisers. The name of certain officers appointed to appraise and divide or apportion lands. It was their duty to make a survey, schedule or inventory of the lands, to lay them out under certain heads,

and then to ascertain the value of each, as preparatory to the division or partition. *Bract.* fol. 72 b, 75. *Britt.* c. 71.

**EXTENT, (or EXTENDI FACIAS.)** In English practice. A species of execution upon debts of record due to the crown, differing in this respect from an ordinary writ of execution at suit of the subject, that under it the body, lands and goods may be all taken at once in order to compel the payment of the debt. 4 *Steph. Com.* 42. Its name is derived from the words of the old writ, commanding the sheriff to *cause* the lands, goods and chattels to be *extended* (*extendi facias*), and appraised, &c.\* *Id.* 43. 3 *Bl. Com.* 420. See *Extendi facias*, *Extend*. There are two kinds of this writ; an extent in chief, and an extent in aid. 2 *Tidd's Pr.* 1045.

The act of extending lands, (L. Lat. *extenta*, *extensio*;) the act of the sheriff in executing the writ of extent. *Bro. Abr.* Extent. *Stat.* 16 & 17 *Car.* II. c. 5. See *Extenta*, *Extensio*.

**EXTENT IN CHIEF.** In English practice. The principal kind of extent, issuing at the suit of the crown for the recovery of the crown's debt. 4 *Steph. Com.* 47. 2 *Tidd's Pr.* 1045. See *Extent*.

**EXTENT IN AID.** In English practice. That kind of extent which issues at the instance and for the benefit of a debtor to the crown, for the recovery of a debt due to himself. 2 *Tidd's Pr.* 1045. 4 *Steph. Com.* 47.

**EXTENTA.** L. Lat. In old records. An extent; an estimate or valuation; or, more properly, a survey or register of lands. 1 *Mon. Angl.* 548. *Cowell.* See *Extenta manerii*.

**EXTENTA MANERII.** L. Lat. (The extent or survey of a manor.) The title of a statute passed 4 *Edw.* I. st. 1; being a sort of direction for making a survey or terrier of a manor, and all its appendages. 2 *Reeves' Hist. Eng. Law*, 140.

**EXTENTIO, Extensio.** L. Lat. [from *extendere*, q. v.] In old English law. An extending, surveying or laying out of lands. *Bract.* fol. 72, 75 b.

**EXTINCT.** [from Lat. *extinguere*, to destroy or put out.] Extinguished. A rent is said to be extinguished when it is destroyed and put out. *Co. Litt.* 147 b. See *Extinguishment*.

**EXTINCTION.** See *Extinguishment*.

**Extinctio subjecto, tollitur adjunctum.** When the subject is extinguished, the incident ceases. Thus, when the business for which a partnership has been formed is completed, or brought to an end, the partnership itself ceases. *Inst.* 3. 28. 6. 3 *Kent's Com.* 52, note.

**EXTINGUISHMENT.** A putting an end to a thing, as an estate or right, usually by consolidating or uniting it with another.\*—The annihilation of a collateral thing or subject, in the subject itself out of which it is derived. *Preston on Merger*, 9. Extinguishment is sometimes confounded with *merger*, though there is a clear distinction between them. *Merger* is only a mode of extinguishment, and applies to estates only under particular circumstances; but *extinguishment* is a term of general application to rights as well as estates. 2 *Crabb's Real Prop.* 367, § 1487. Called *extinction*. 2 *Steph. Com.* 41. See *U. S. Digest & Supplement*, *Extinguishment*.

**EXTINGUISHMENT OF COMMON,** is effected in various ways. By unity of seisin or possession; as where the person entitled to common becomes seised in fee by purchase, or otherwise, of the land which is subject to the right. 2 *Steph. Com.* 41. 1 *Crabb's Real Prop.* 303, § 336. By severance from the land to which it belongs. *Id.* 305, § 340. By release; as when a person entitled to common, releases it to the owner of the soil over which it is claimed. *Co. Litt.* 280 a, 270 a. *Litt. sect.* 479, 480. 2 *Steph. Com.* 41. 1 *Crabb's Real Prop.* 306, § 341. By approprement or enclosure; and by dissolution of the estate. *Id.* 306, 307, §§ 342, 343. See 2 *Hilliard's Real Prop.* 75.

**EXTINGUISHMENT OF COPYHOLD.** In English law. A copyhold is said to be *extinguished*, when the freehold and copyhold interest unite in the same person and in the same right, which may be either by the copyhold interest coming to the freehold, or by the freehold interest coming to the copyhold. 1 *Crabb's Real Prop.* 670, § 864.

**EXTINGUISHMENT OF DEBT.** Where a judgment is given for a debt, the original debt is *extinguished*. So, if a feme sole who is a creditor marry her debtor, or if a man make his debtor his executor, the debt is *extinguished*. 8 *Co.* 136. *Plowd.*

184. 1 *Salk*. 304. *Whishaw*. *Wharton's Lex*.

**EXTINGUISHMENT OF RENT.** If a person have a yearly rent out of lands, and afterwards purchase those lands, so that he has as good an estate in the land as in the rent, the rent is *extinguished*. *Termes de la ley*. *Cowell*. *Co. Litt.* 147. Rent may also be extinguished by conjunction of estates, by confirmation, by grant, by release and by surrender. 1 *Crabb's Real Prop.* 210—213, § 209.

**EXTINGUISHMENT OF WAYS**, is usually effected by unity of possession. As if a man have a way over the close of another, and he purchase that close, the way is *extinguished*. 1 *Crabb's Real Prop.* 341, § 384.

**EXTIRPARE.** L. Lat. In old English law. To extirpate or root out; to destroy utterly, or from the foundation. Applied in old writs to the destruction or demolition of houses. *Unam aulam—quatuor cameras—unam coquinam—extirpaverunt*, &c.; they extirpated or entirely destroyed one hall, four chambers, one kitchen, &c. *Reg. Jud.* 13. *Id.* 58 b.

**EXTIRPATION.** In English law. A species of destruction or waste, analogous to estrepement. See *Estrepement*, *Extirpare*.

**EXTOCARE.** L. Lat. In old records. To grub wood-land and reduce it to arable or meadow; "to stock up," as it is rendered in *Cowell*.

**EXTORTION.** [from Lat. *extortio*, from *extorquere*, to wring or wrest from.] In criminal law. An unlawful or violent wringing of money or money-worth from any man. *Cowell*. A taking of more than is due, by color or pretence of right. *Id.*

The offence of an officer's taking, by color of his office, any money, or thing of value that is not due to him, or more than is due, or before it is due. *Co. Litt.* 368 b. 10 *Co.* 102. 4 *Bl. Com.* 141. 4 *Steph. Com.* 272. 2 *N. Y. Rev. Stat.* [650], 542, § 5. *Lewis' U. S. Crim. Law*, 267.

**EXTRA.** Lat. [L. Fr. *hors*, *dehors*.] Without; out of; beyond. Applied to things and places; its opposite being in or intra. *Calv. Lex. Jur.*

Except; (as applied to persons.) *Id.*

A term by which the Decretals of Gregory, in the canon law, are usually cited. *Hallifax Anal.* b. 1, ch. 1, note.

**EXTRA FEODUM.** L. Lat. [L. Fr. *hors de son fee*.] Out of his fee; out of the seignior, or not holden of him that claims it. *Co. Litt.* 1 b. *Reg. Orig.* 97 b.

**EXTRA JUDICIUM.** Lat. Out of court. *Sive in judicio, sive extra judicium*; whether in court, or out of court. *Inst.* 4. 11. 4.

Not by a judicial proceeding; not by due course of law. *Quæ non in judicio, sed extra prosequimur*; which we prosecute not by course of law, but without it. *Bract.* fol. 98 b.

Out of judgment; beyond the line of judicial duty; extrajudicial, (q. v.)

**EXTRA JUS.** Lat. Beyond the law; more than the law requires. *In jure, vel extra jus*. *Bract.* fol. 169 b.

**EXTRA LEGEM.** L. Lat. Out of the law; out of the protection of the law. *Extra legem positus est civiliter mortuus*; one who is put out of the law [outlawed] is civilly dead. *Co. Litt.* 130.

**EXTRA QUATUOR MARIA.** L. Lat. Beyond the four seas; out of the kingdom of England. 1 *Bl. Com.* 457. See *Beyond sea*, *Four seas*.

**EXTRA TERRITORIUM.** Lat. Beyond or without the territory. 6 *Binney's R.* 353. 2 *Kent's Com.* 407.

**Extra territorium jus dicenti non paratur impune.** One who exercises jurisdiction out of his territory is not obeyed with impunity. *Branch's Princ.* 10 *Co.* 77. He who exercises judicial authority beyond his proper limits, cannot be obeyed with safety.

The peculiar meaning of the words *jus dicenti*, (which themselves present an analysis of the word *jurisdiction*), is lost sight of in the ordinary translations of this maxim. See *Branch's Princ.* *Wharton's Lex*.

**EXTRACT.** In Scotch law. The certified copy, by a clerk of a court, of the proceedings in an action carried on before the court, and of the judgment pronounced; containing also an order for execution or proceedings thereupon. *Jacob. Whishaw*.

**EXTRACTA.** L. Lat. In old English law. Extracts; estreats. *Stat. Westm.* 2, c. 8. See *Estreat*.

Profits arising from amercements. *Extracta curiæ*; the issues or profits of holding a court, arising from the customary dues, fees and amercements. *Cowell*.

**EXTRADITION.** [from *ex*, from or out of, and *traditio*, a delivery.] Delivery from one nation or state to another. Particularly applied to the delivery by one nation or state to another, of fugitives from justice, in pursuance of a law or treaty.\* *Webster. Lewis' U. S. Crim. Law*, 241, *et seq.*

**EXTRADOTAL.** Not forming a part of a woman's dowry. A term applied to a species of a wife's separate property. *Code of Louis*, art. 2315.

**EXTRAFAMILIATUS.** Lat. The same with *forisfamiliatus*, (q. v.) *Spelman*.

**EXTRAHURA.** L. Lat. [from Fr. *extrayeur*, or Lat. *extra*, without.] In old English law. An animal wandering or straying about, without an owner; an estray. *Spelman. LL. Inæ*, c. antepenult. cited *ibid.* See *Estray*.

**EXTRAJUDICIAL.** [from Lat. *extra*, beyond, and *judicium*, judgment or due course of law. See *Extra judicium*.] Out of the ordinary course of law; out of the regular order of judicial procedure; beyond the limits of judicial authority or duty. Applied most commonly to the acts of a judge where he exceeds his authority, or goes beyond what is required of him; as where he expresses an opinion on a point not regularly submitted to him. See *Dictum*.

**EXTRANEUS.** Lat. [from *extra*, without.] In old English law. A stranger or foreigner; one who is born out of the king's dominions, (*qui extra terram*, i. e. *potestatem regis, natus est*.) 7 *Co*. 18.

In the Roman law. The epithet of an heir who was not subject to the power of the testator; (*testatoris juri non subjectus*.) *Inst.* 2. 19. 3. The *hæres extraneus* was thus distinguished from the *suus*, or *domesticus hæres*. *Id.* 2. 19. 2. *Heinecc. El. Jur. Civ. lib.* 2, tit. 19, § 586.

**EXTRAPAROCHIAL.** [from *extra*, without, and *parochia*, a parish.] Out of a parish; not within the bounds or limits of any parish. 1 *Bl. Com.* 113, 284.

**EXTRAVAGANTES.** L. Lat. In the canon law. The title of the papal constitutions and decretal epistles of Pope John XXII. and his successors; being one of the divisions of the *Decretales*, or second part of the *Corpus Juris Canonici*. See *Decretales*. So called, because at first they were

not digested or embodied with the other papal constitutions but remained out of (*extra*) the body of the canon law, as though wandering or straying (*vagantes*) by themselves.\* *Ducange. 1 Bl. Com.* 82. They are generally called in English *Extravagantes*, and are of two kinds; the *Extravagantes Joannis XXII.*, or those published by John himself, consisting of twenty decretals, and the *Extravagantes Communes*, or those published by his successors, being divided into five books. *Id. ibid.* 1 *Mackeld. Civ. Law*, 82, 83, note. *Hallifax Anal.* b. 1, ch. 1, note.

**EXTUMÆ.** L. Lat. In old records. Reliques. *Cowell*.

**EXTUNC.** Lat. From then; from that time; from thence; thereafter. *Calv. Lex. Jur. Towns. Pl.* 22. *Extunc imperpetuum*; from thenceforth forever. *Reg. Orig.* 289 b. *Extunc deinceps* (or *de cætero*) *imperpetuum. Towns. Pl.* 22.

**EXUERE PATRIAM.** Lat. To throw off or renounce one's country or native allegiance; to expatriate one's self. *Phillimore on Domicil*, 18. See *Expatriation*.

**EXULARE.** Lat. In old English law. To exile or banish. *Nullus liber homo—exuletur, nisi, &c*; no freeman shall be exiled, unless, &c. *Magna Charta*, c. 29. 2 *Inst.* 47.

**EY.** [L. Lat. *eia*; L. Fr. *eue*, water; Sax. *eage*.] In old English law. A watery place or water. *Co. Litt.* 5 b. Kelham puts this down as a French word.

A place surrounded by water; an island. *Spelman*, voc. *Eia*. A frequent termination of the names of places in England, (as *Ramsey, Sheppey, &c.*) denoting, according to *Spelman*, either an island or peninsula, or a situation near a river or other water.

**EYDE, Eide, Aide.** L. Fr. Aid; help; assistance. *Par eyde de nostre court. Britt.* c. 15.

Aid, in the feudal law. *Id.* c. 27.

A subsidy. *Stat. Confirm. Chart.* c. 5. 2 *Inst.* 528.

Help. See *Eyder*.

**EYDER.** L. Fr. To aid or help. *Se purra il eyder par exceptions*; he may help himself by exceptions. *Britt.* c. 104.

*Si moy eyde Dieu et ses (les) seyntz*; so help me God, and his (the) saints. *Id.* c. 68.

**EYGNE**, *Eyne*. L. Fr. Eldest. *Fitz eygne*. *Britt.* c. 27. See *Aisme*.

**EYNESSE**. L. Fr. Eldest. *Fille eynesse*. *Britt.* c. 27.

**EYOTT**, *Eyot*, *Eyet*. [dimin. of *ey*, an island; L. Lat. *insuletta*.] A small island; an islet. 2 *Bl. Com.* 261. 1 *Crabb's Real Prop.* 113. *Schultes' Aquat. Rights*, 94.

**EYR**. L. Fr. Air. *Britt.* c. 33.

**EYRE**, *Eire*, *Eier*, *Eyer*. L. Fr. & Eng. [Scotch *ayre*, *ayr*; from Lat. *iter*, a journey.] In old English law. A journey; the journey or circuit of the king's justices. *Britt.* c. 2. See *Eire*.

The court of the justices itinerant, or justices in eyre. *Britt.* c. 2. *Co. Litt.* 293. *Gilb. C. Pleas*, Introd. 23. 1 *Reeves' Hist. Eng. Law*, 52. *Spelman*, voc. *Iter*.

**EYRER**. L. Fr. [Lat. *itinerare*.] To travel, or journey; to go about or itinerate. *Britt.* c. 2.

**EYT**. L. Fr. Have; hath. *Britt.* c. 55. *Eyent*; have. *Id.* c. 21.

## F.

**F**. The letter anciently used in England, for branding persons who had been guilty of *falsity*, in breaking their oaths under the statute of laborers; *fighters* and makers of *frays* in churches and churchyards; and *felons*, on their being admitted to the benefit of clergy. *Stat.* 34 *Edw.* III. c. 10. 2 *Reeves' Hist. Eng. Law* 392. 4 *Id.* 485. *Stat.* 5 & 6 *Edw.* VI. c. 4. *Cowell*. *Stat.* 4 *Hen.* VII. c. 13. *Tomlins*.

**F**. A letter used in the civil law in various abbreviations. *f. c.* for *fidei commissum*, or *fiduciæ causa*, or *fraude creditoris*. *f. d.* for *fides data*, or *fide data*. *f. f.* for *filius familias*, or *fidem fecit*. *f. j.* for *fieri jussit*. *f. n. c.* for *fidei nostra commisit*. *Calv. Lex. Jur. Præteius*.

**FABRIC LANDS**. In English law. Lands given towards the maintenance, rebuilding or repairing of cathedral and other churches. *Cowell*. *Blount*. So called because given *ad fabricam ecclesiæ reparandum*; (to repair the fabric of the church.) *Id.*

**FAB**. *fur. porta, domus, vir. gur. mo. murus, ovile, Et pons, tradantur hæc vice comitibus*.

A Latin couplet artificially composed of

words and parts of words, anciently used as an aid to the memory, to show what descriptions of nuisances or disseins by nuisance were cognizable before the sheriffs in the county court. *Reg. Orig.* 199, *regula*. By writing the abbreviated words at length, the following sentence is produced: *Fabrica, furca, porta, domus, virgultum, gurges, molendinum, murus, ovile, et pons, tradantur hæc vice comitibus*; or in English, Building, gallows, gate, house, wood, gulf, mill, wall, sheepfold and bridge, these should be delivered to the sheriff; i. e. writs for nuisances to the several objects enumerated, must be tried before the sheriff in the county where the nuisance was committed. *Reg. Orig. ub. sup.*

**FABRICARE**. L. Lat. In old pleadings and records. To forge. *Fabricavit et contrafecit*; he forged and counterfeited. 2 *Ld. Raym.* 1462. 1 *Salk.* 342. *Falsum factum fabricavit*; he forged a false deed. 5 *Co.* 62. See *Forge*.

**FABULA**. L. Lat. In old European law. A contract or covenant. Used in the laws of the Lombards and Visigoths, to denote a nuptial contract, and a will; (*tabulæ nuptiales seu testamentales*.) *Spelman*. *LL. Longob.* lib. 1, tit. 30, c. 3. *Id.* tit. 19, c. 9. *LL. Wisigoth.* lib. 3, tit. 1, l. 6. *Id.* lib. 5, tit. 2, l. 4., cited *ibid.*

**FACERE**. Lat. [Fr. *faire*.] To do, to make, to act; to cause (a thing to be done.) An important word formerly in the language of writs and contracts, and the general language of the law. See *Facio*.

*Facere duellum*; to make the duel; to engage in the combat, or make or *do battle*, as the phrase still is. *Bract.* fol. 141 b.

*Facere finem*; to make or pay a fine. *Id.* fol. 154.

*Facere legem*; to make one's law. *Id.* fol. 156 b, 334 b, 335 b; 410. See *To make law*.

*Facere defaultam*; to make default. *Bract.* fol. 238, 334 b, 360 b, 363.

*Facere sacramentum*; to make oath. *Id.* fol. 50 b, 185 b. See *Make*.

**FACIAS**. L. Lat. [from *facere*, q. v.] You cause. An emphatic word in various writs, as of *venire facias*, *fieri facias*, *scire facias*, (qq. v.) Hence selected to express their names.

**FACIENDO**. L. Lat. [from *facere*, (q. v.); L. Fr. *fesaunt*.] Doing, making or



paying. One of the apt words of reserving a rent, used in ancient deeds. *Co. Litt.* 47 a. Applied usually to those services which consisted of acts done, (*factiones*.) *Faciendo inde talia servitia*; doing therefor such services. *Bract.* fol. 35 b.

**FACIES.** Lat. The face, outward appearance or color of a thing; the inspection or view of a thing. *Prima facies*; the first face or appearance. *Prima facie*; on the first view or color, (at first blush, as the modern phrase is.) *Bract.* fol. 29, 280. See *Color*, *Ex facie*, *In facie ecclesie*.

**FACIES? FACIAM.** Lat. (Will you do? I will do.) In the civil law. One of the forms in which verbal obligations or stipulations were made. *Inst.* 3. 16. 1.

**FACIO UT DES.** Lat. (I do that you may give.) In the civil law. A form of words used to express that kind of contract where a man agrees to do a thing for a price or thing to be given him by another. 2 *Bl. Com.* 445. *Dig.* 2. 14. 7. *Id.* 19. 4. 5. *Bract.* fol. 18, 19, 19 b.

**FACIO UT FACIAS.** Lat. (I do that you may do.) In the civil law. Words used to express that kind of contract where a person agrees to do some act for another, if the other will do some other act for him. 2 *Bl. Com.* 444. See *Facio ut des*.

**FACIT.** Lat. [from *facere*, q. v.] In old English law. He does or acts; it makes, or contributes to establish. *Ad idem facit*; it makes to the same thing; it goes to establish the same point. A common expression in Bracton. *Bract.* fol. 27 b, 29.

**Qui facit per alium, facit per se,** (q. v.) He who acts through another, acts through himself. 1 *Bl. Com.* 429, 474.

**Qui facit id quod plus est, facit id quod minus est, sed non convertitur.** He who does the greater does the less; but this is not true *é converso*. *Bract.* fol. 207 b.

**FACT.** [L. Lat. *factum*, q. v.] A thing done; a circumstance, event or occurrence. This word was anciently used almost exclusively as the synonyme of *act* or *deed*; e. g. "accessary before and after the *fact*;" but in modern law it has the broader sense of circumstance.

*Fact* is contrasted with *law* in the common phrases, "attorney at *law* and attorney in *fact*;" "issue in *law*, and issue in *fact*;" "fraud in *law*, and fraud in *fact*." The Lat. *factum* had sometimes the more intense

sense of a thing done in violation of law. See *Factum*.

**FACTA.** Lat. (pl. of *factum*, q. v.) In old English law. Deeds. *Facta armorum*; deeds or feats of arms, that is, jousts or tournaments. *Cowell*.

**Facts.** *Facta et casus*; facts and cases. *Bract.* fol. 1 b.

**FACTIO.** L. Lat. [from *facere*, q. v.] In old English law. A doing. Anciently applied to services done by a tenant. *Bract.* fol. 35 b.

**FACTIO TESTAMENTI.** Lat. In the civil law. The right, power or capacity of making a will; called *factio activa*. *Inst.* 2. 10. 6. *Id.* 2. 19. 4. *Cooper's notes* \*488.

The right or capacity of taking by will; called *factio passiva*. *Inst.* 2. 10. 6. *Id.* 2. 19. 4. *Cooper's notes*, *ub. sup.*

**FACTO.** L. Lat. (abl. of *factum*, q. v.) In fact; by an act; by the act or fact. *Ipsso facto*; by the act itself; by the mere effect of a fact, without any thing superadded, or any proceeding upon it to give it effect. 3 *Kent's Com.* 55, 58.

**FACTOR.** In mercantile law. A mercantile or commercial agent, who buys and sells goods for others on commission.\* 2 *Kent's Com.* 622. Otherwise called a commission merchant, and a consignee of goods, being generally the correspondent of a foreign house. *Id. ibid.* note. More commonly employed to sell than to buy, and hence also defined to be "an agent to whom goods are consigned or delivered for sale by, or for a merchant, or other person residing abroad, or at a distance from the place of sale." *Russell on Factors*, 1. *Story on Agency*, § 33.

A factor is distinguished from a broker by being entrusted with the possession, management and control of the goods, and by being authorized to buy and sell in his own name, as well as in that of his principal. *Russell on Factors*, 4. *Story on Agency*, § 33. 2 *Steph. Com.* 127. 2 *B. & Ald.* 137, 143. 2 *Kent's Com.* 622, note.

**FACTORAGE.** The allowance or commission paid to a factor by his principal. *Russell on Factors*, 1. *Tomlins*.

**FACTUM.** Lat. [from *facere*, to do, to make; L. Fr. *fait*, q. v.] A thing done; an act or deed. *Occultum factum*; a secret act. *Bract.* fol. 137 b. *Initium facti*; the

beginning of the deed. *Id. Ex uno facto*; from one act. *Id. fol. 235. Ex post facto*; from an after act; in consequence of a thing done afterwards. *Id. fol. 11 b, 12.*

*Fieri non debet, sed factum valet*, (q. v.) It ought not to be done, but if done, it is valid. See *Fieri*.

*Factum infectum fieri nequit*. A thing done cannot be undone. 1 *Kames' Equity*, 96, 259.

*Factum non dicitur quod non perseverat*. That is not said to be done, which does not hold out. 5 *Co.* 396. *Shep. Touch.* (by Preston,) 391. An act which may be avoided as soon as done, is no act in law. 5 *Co.* 3.

*Factum minus alteri nocere non debet*. The act or deed of one man ought not to prejudice another. *Co. Litt.* 152 b.

**FACTUM.** Lat. A culpable act; a fault. *Sine facto hæredis*; without fault of the heir. *Inst.* 2. 20. 16.

An unlawful act; an act not founded in right or law; a wrongful act. See *Ex facto, De facto*.

A criminal act. *Factum*, in old English criminal law, was distinguished from *fortia*, as the principal act of a murder, in contradistinction to the acts of those who aided and abetted it. *Bract. fol. 138, 139.* See *Eortia*.

**FACTUM.** L. Lat. In old English law. A deed; [a thing done in writing;] a conveyance or other written instrument, under seal, formerly otherwise termed *charta*, and by the civilians *literarum obligatio*. *Co. Litt.* 35 b, 171 b. 2 *Stra.* 815. *Spelman.* 2 *Bl. Com.* 295. 1 *Steph. Com.* 446. See *Charta, Deed. Factum simplex*; a deed poll. *Spelman. Factum indentatum*; a deed indented. *Id.* Bracton uses *factum* with *charta*, though not apparently as a synonyme. *De chartis regis et factis regum. Bract. fol. 34. Nec factum regis nec chartam. Id. ibid.* The *charta* was the expression and evidence of the *factum*, and hence the natural transition from the one term to the other, to signify the same thing. *Factum*, however, does not appear to have at first had the full meaning of *charta*, and hence the distinction made between them by Lord Coke. *Co. Litt.* 9 b. See *Deed*.

**FACTUM.** Lat. Fact, as distinguished from law. *Facti non juris. Dig.* 41. 2. 1. 3.

A fact. *Facta et casus. Bract. fol. 1 b. Factum probandum*; a fact to be proved, the principal fact in a case. *Factum probans*; a proving fact; a minor or evidentiary fact, from which another fact is in-

ferred. *Wills. on Circumst. Evid.* 24. 1 *Greenl. on Evid.* § 13. *Best on Evid.* 21, § 27. *Id.* 314, § 274.

**FACTUM.** L. Lat. In old European law. A portion or allotment of land. *Spelman.*

**FACULTY.** [Lat. *facultas*.] Power or ability.

In Scotch law. A power founded on consent, as distinguished from a power founded on property. 2 *Kames' Equity*, 265.

In English ecclesiastical law. A privilege or special dispensation, granted to a man by favor and indulgence, to do that which, by law, he could not do. *Tomlins. Termes de la ley. Cowell.*

*Facultas probationum non est angustanda*. The power of proofs [right of offering or giving testimony] is not to be narrowed. 4 *Inst.* 279.

**FADERFIUM.** L. Lat. [Sax. *fæderfeh*; from *fæder*, father, and *feh*, a gift.] In old European law. A gift or portion which a woman's father or brother gave her on her marriage. *Spelman. LL. Longob. lib. 2, tit. 1, l. 4, cited ibid.*

**FÆSTING-MEN, Fasting-men.** In Saxon law. Pledges, sureties or bondsmen, which by custom were *fast* bound to answer for one another's peaceable behaviour. *Cowell. Ducange* renders it *vassals. Id. ibid.*

**FAIDA, Feida.** L. Lat. [Germ. *Feide, teide*; Sax. *fæhd*, enmity, from *fah*, a foe.] In old European law. A combination of kindred, to revenge the death of any of their blood against the killer and all his race. *Cowell, voc. Feed.* A right or custom common to most of the nations of Europe during the middle ages, by which the relatives of a person injured or slain, took up his quarrel, (*susceperunt inimicitias*,) by placing themselves in a state of open and declared enmity against the wrongdoer and his family, and carrying on a species of private war for the purpose of obtaining the desired satisfaction or revenge. This custom, which is sometimes called *deadly feud*, was of Germanic origin, and prevailed on the continent and in England down to the time of the Norman invasion. According to the Saxon laws, it might be waived by a pecuniary compensation. Hence the proverb cited by *Spelman: Byhs spere of side, othe bær*, (buy spear off side, or bear;) i. e. buy exemption from war, or

carry it on. *Spelman*, voc. *Faida*. I *Robertson's Charles V.* Appendix, Note xxi.

**FAILLITE.** Fr. In French law. Bankruptcy. *Code de Com.* art. 442, 580. 4 *Man. & Gr.* 239, note. Failure; the situation of a debtor who finds himself unable to fulfil his engagements. *Civil Code of Louis.* art. 3522.

**FAILURE OF RECORD.** In practice. The failure to produce a record, after pleading it.\* Where a defendant pleads any matter of record, and offers to prove it by the record, and the plaintiff denies that there is any such record, and the defendant has a day given him to bring in the record; if he fails to do so, or produces such a one as is no bar to the action, he is then said to *fail of his record*, and thereupon the plaintiff shall have judgment to recover, &c. *Termes de la ley*.

**FAINT (or FEIGNED) ACTION.** In old English practice. An action was so called, where the party bringing it had no title to recover, although the words of the writ were true; a *false* action was properly where the words of the writ were false. *Litt.* sect. 689. *Co. Litt.* 361. See *Feigned action*.

**FAINT-PLEADER.** [L. Lat. *falsa placitatio*.] In old practice. A fraudulent, false, or collusory manner of pleading, to the deceit of a third person. *Termes de la ley*. *Stat.* 34 & 35 *Hen. VIII.* c. 24. *Cowell*.

**FAIR.** [Fr. *feire, feyre*; Lat. *ferias nundinae*.] A larger sort of market instituted in England for the greater convenience of domestic trade and commerce, and held at certain times of the year, either by grant from the crown, or by prescription which supposes a grant. 2 *Inst.* 220. 1 *Bl. Com.* 274. *Tomlins*. According to Lord Coke, every fair is a market, but every market is not a fair. 2 *Inst.* 406. The privilege of having a fair is a franchise, which may be held by a town or an individual. 1 *Crabb's Real Prop.* 525, § 679, *et seq.* 2 *Steph. Com.* 14, 15.

**FAIR PLEADER.** See *Beaupleader*.

**FAIRE.** L. Fr. [Lat. *facere*.] To make or do. *Faire sa ley*; to make his law. *Britt.* c. 27. *Faire satisfaccion*. *Id.* c. 110. *Faire gree*; to make satisfaction. *Id.* c. 75.

To do, or commit. *Sauns fraude faire*; without doing fraud. *Id.* c. 16.

**FAISANT.** L. Fr. [from *faire*, q. v.] Doing. See *Fessant*.

**FAIT.** L. Fr. [from *faire*, (q. v.); L. Lat. *factum*.] A deed, (conveyance.) *Co. Litt.* 35 b, 121 b. *Fuit endent*; a deed indented. *Litt.* sect. 217, 370. *Fait polls*; a deed poll. *Id.* sect. 218. Matters *en fait* (in deed) are distinguished by Lord Coke from matters of record. *Co. Litt.* 380 b.

A deed or act. *Chescun respoyne pur son fait*; every one shall answer for his act. *Britt.* c. 27.

Fact. *Femme de fait*; a wife in fact, (or *de facto*.) *Id.* c. 107.

Done. *Si le fait eyt este fait*; if the deed have been done. *Id.* c. 27.

**FAITH.** In Scotch law. A solemn pledge; an oath. "To make faith" is to swear with the right hand uplifted, that one will declare the truth. 1 *Forbes' Inst.* part 4, p. 235. This phrase seems to be the literal translation of *affidare*, (q. v.)

**FAITOURS.** L. Fr. Evil doers; idle persons; vagabonds or vagrants. *Stat.* 7 *Ric.* II. c. 5. *Termes de la ley*. *Blount*.

**FALCARE.** Lat. [from *falx*, a scythe.] In old English law. To mow. *Falcare prata*; to mow or cut grass in meadows laid in for hay. A customary service to the lord by his inferior tenants. *Kennett's Gloss.* *Herbam falcare*. *Reg. Orig.* 94. *Jus falcandi*; the right of cutting wood. *Bract.* fol. 231.

*Falcata*; grass fresh mown, and laid in swathes. *Kennett's Gloss*.

*Falcatio*; a mowing. *Bract.* fol. 35 b, 230.

*Falcator*; a mower; a servile tenant who performed the labor of mowing. *Kennett's Gloss*.

*Falcatura*; a day's mowing. *Id.*

**FALCIDIA LEX.** In Roman law. The Falcidian law. *Inst.* 2. 22. See *Falcidian Law*.

**FALCIDIAN LAW.** [Lat. *Lex Falcidia*.] In the civil law. A law enacted on motion of Publius Falcidius, tribune of the people, A. U. C. 714, by which a testator was forbidden to give more, in legacies, than three-fourths of all his effects, (*quod cavetur ne plus legare liceat quam dodrantem totorum bonorum*;) or, in other words, requiring him to leave at least one-fourth

of his estate to the heir. *Inst.* 2. 22. pr. *Cooper's Notes*, in loc. *Heinecc. Elem. Jur.* Civ. lib. 2, tit. 22. *Calv. Lex. Jur.*

**FALCIDIAN PORTION.** In the civil law. That portion of a testator's estate which by the Falcidian law (q. v.) was required to be left to the heir, amounting to at least one-fourth.\* *Hallifax Anal.* b. 2, ch. 7, num. 18, 19. *Civil Code of Louis.* art. 1808. 1 *White's Recop.* 106.

**FALDA.** L. Lat. [Sax. *fald*, an enclosure.] In old English law. A sheep-fold, (*ovile*.) *Cowell. Spelman.*

A place in which any animals were shut up. *Id.*

The liberty of faldage, (q. v.) *Id.*

**FALDÆCURSUS.** L. Lat. In old English law. A fold course; the course, (going or taking about) of a fold. *Spelman.* See *Faldagium*.

A sheep walk, or feed for sheep. 2 *Ventr.* 139.

**FALDAGE.** [L. Lat. *faldagium*, from *falda*, q. v.] In old English law. Foldage; the privilege of setting up and moving about in a field a *fold*, (i. e. a moveable pen for sheep,) for the purpose of manuring the ground. *Spelman*, voc. *Falda*. A privilege which several lords anciently reserved to themselves in any fields within their manors, for the better manurance of the same, not only with their own but their tenants' sheep. *Id. Cowell.* This privilege on the part of the lords was called *falda libera*, (frank or free fold,) *cursus faldæ*, (course of fold, fold course,) and in some old charters *faldsoca*. The corresponding duty of the tenant was called *secta faldæ*, (suit of fold.) *Id. ibid.*

**FALDATA.** L. Lat. [from *falda*, q. v.] In old English law. A flock or fold of sheep. *Cowell.*

**FALDFEY.** Sax. [from *fald*, a fold, and *feh*, a fee.] A fee or rent paid by a tenant to his lord, for leave to *fold* his sheep on his own ground. *Blount.* See *Falda*.

**FALDSOCA.** Sax. [from *fald*, fold, and *soc*, liberty.] The liberty or privilege of foldage. See *Faldage*.

**FALDWURTHI.** *Faldwrthi.* Sax. [from *fald*, a station, or fixed abode, and *wurthi*, worthy.] In Saxon law. A per-

son of proper age to be fixed in some certain decennary or friburg. *Spelman.*

**FALERÆ.** L. Lat. In old English law. The tackle and furniture of a cart or wain. *Blount.*

**FALESIA.** L. Lat. In old English law. A hill, or down by the sea side. *Co. Litt.* 5 b. *Domesday.*

**FALL.** In Scotch law. To lose. To *fall* from a right, is to lose or forfeit it. 1 *Kames' Equity*, 228. See *Cadere*.

**FALSA DEMONSTRATIO.** Lat. In the civil law. False designation; erroneous description of a person or thing in a written instrument. *Inst.* 2. 20. 30. 1 *Mackeld. Civ. Law*, 169, § 175. See *Demonstratio*.

*Falsa demonstratio non nocet, cum de corpore (persona,) constat.* False description does not injure or vitiate, provided the thing or person intended have once been sufficiently described. Lord Kenyon, C. J., 6 *Term R.* 676. Park, B., 11 *Mees. & W.* 189. Story, J., 2 *Story's R.* 291. 6 *Hill's* (N. Y.) *R.* 616. *Broom's Max.* 269. 1 *Greenl. on Ev.* § 301. *Shep. Touch.* (by Preston,) 77, 99, 248. 4 *Kent's Com.* 267.

*Falsa grammatica non vitiat concessio-nem.* False or bad grammar does not vitiate a grant. *Shep. Touch.* 55. 9 *Co.* 48 a. Neither false Latin nor false English will make a deed void, when the intent of the parties doth plainly appear. *Shep. Touch.* 87. *Wingate's Max.* 19, max. 13.

*Falsa orthographia non vitiat chartam [concessionem.]* False spelling does not vitiate a deed. *Shep. Touch.* 55, 87. 9 *Co.* 48 a. *Wingate's Max.* 19.

**FALSARE.** L. Lat. [from *falsus*, q. v.] In old English law. To counterfeit. *Quia falsavit sigillum*; because he counterfeited the seal. *Bract.* fol. 276 b.

*Falsarius*; a counterfeiter. *Towns. Pl.* 260.

**FALSE ACTION.** See *Faint action*.

**FALSE CLAIM,** in the forest law, was where a man claimed more than his due, and was amerced and punished for the same. *Manwood*, c. 25. *Tomlins.*

**FALSE IMPRISONMENT.** [L. Lat. *falsum imprisonamentum.*] A trespass committed against a person, by arresting and confining or imprisoning him without

sufficient authority, as by doing so without some lawful warrant or process, or by executing a lawful warrant or process at an unlawful time, as on a Sunday.\* 3 *Bl. Com.* 127. 3 *Steph. Com.* 480. Every confinement of the person is an imprisonment, whether it be in a common prison, or in a private house, or even by forcibly detaining one in the public streets. 2 *Inst.* 589. No actual force is necessary to constitute a false imprisonment. If a man is restrained of his personal liberty by fear of a personal difficulty, that amounts to a false imprisonment. 7 *Humphrey's* (Tenn.) *R.* 43. See *U. S. Digest and Supplement*, False Imprisonment.

The name of the action which lies for this species of injury. 3 *Bl. Com.* 138. *Tomlins*.

**FALSE JUDGMENT.** [L. Lat. *falsum judicium*; breve de falso judicio.] In English law. A writ which lies to the courts at Westminster to reverse the judgment of some inferior court not of record. 3 *Bl. Com.* 34, 406. *F. N. B.* 18. *Finch*, *L.* 484.

In old French law. An appeal of false judgment was where the party against whom a judgment was given, charged the judges or peers of the court with pronouncing a false judgment, and thereupon usually appealed or challenged them to the combat. *Espit des Lois*, liv. 28, c. 27.

**FALSE LATIN.** In old practice. Ungrammatical Latin. Before the statute directing law proceedings to be in English, if a Latin word was significant, though not true or good Latin, yet an indictment, declaration or fine should not be impeached or quashed on account of it, as where the word *præfatus* was used for *præfata*, and the like. But if the word was not Latin nor allowed by the law as *vocabulum artis*, (a word or term of art,) but was insensible, there, if it were in a material point, as if *murdredum* was used for *murdrum*, in an indictment, or *burgariter* for *burglariter*, it made the whole vitious and insufficient. 5 *Co.* 121 b.

**FALSE PERSONATION.** In criminal law. The offence of falsely personating another, or representing one's self to be another person, and acting in such assumed character, either with the view of obtaining some property or exercising some right belonging to such person, or with the view or effect of subjecting such person to some legal liability.\* 4 *Steph. Com.* 181, 290. 2 *N. Y. Rev. St.* [676.] 563, §§ 48, 50.

**FALSE RETURN.** In practice. An untrue return made to process by the officer to whom it was delivered for execution; as that the party could not be found, when he might have been taken, or that he had no goods, (*nulla bona*), when property of some kind could have been levied on. 1 *Tidd's Pr.* 309. 2 *Id.* 1022.

**FALSIFICATION.** In equity practice. The showing an item in the debit of an account to be either wholly false, or in some part erroneous. 1 *Story's Eq. Jur.* § 525.

**FALSIFY.** [L. Fr. *fauxer*; L. Lat. *falsare, falsificare, falsum facere*.] To prove false; to avoid or defeat. *Perk.* 383. *Litt.* sect. 149. *Co. Litt.* 104 b. 1 *Co.* 62 b.

To reverse or avoid, as a verdict, or judgment. 4 *Bl. Com.* 390. 4 *Steph. Com.* 455.

In equity practice. To show, in accounting before a master in chancery, that a charge has been inserted which is wrong, that is, either wholly false, or in some part erroneous. *Pulling on Merc. Accounts*, 162. 1 *Story's Eq. Jur.* § 525.

In criminal law. To forge or counterfeit; to make false; to give a false appearance to a thing. See *Crimen falsi*.

**FALSING OF DOOMS.** In Scotch law. An appeal, or the proceedings on an appeal. The proving the injustice, *falsity*, or error of the *doom*, or sentence of a court. *Tomlins*. *Jacob*.

**FALSONARIUS.** In old English law. A counterfeiter; a maker of false or spurious money. *Falsionarii*. *Bract.* fol. 117.

**FALSO RETORNO BREVIUM, Breve de.** L. Lat. A writ which formerly lay against the sheriff who had execution of process, for false returning of writs. *Reg. Jud.* 43 b.

**FALSUS.** Lat. False, erroneous; fraudulent. Applied to persons and things. *Falsus in uno falsus in omnibus*. False in one thing, false in every thing. *Story, J.*, 1 *Sumner's R.* 329, 356. Where a party is clearly shown to have embezzled one article of property, it is a ground of presumption that he may have embezzled others also. *Id. ibid.*

**FAMA.** Lat. Fame; character or reputation. See *Famosus*.

Fame; report. *Fama patriæ*; fame of the country; report or common opinion, upon which a man might anciently be indicted. *Bract.* fol. 143. It must have

arisen, however, *apud bonos et graves*, (among the good and grave; that is, persons of good character and influence.) *Id.*

FAME. See *Fama*.

FAMILIA. Lat. In the Roman law. A family, consisting of the servants (*famuli*) belonging to one common master. This was the ancient and proper sense of the term.\* *Calv. Lex. Jur. See Dig. 50. 16. 40. 3.*

A family or household; including wife, children, servants and all others who lived in the same house, and in subjection to one head, (*qui sub unius potestate in eadem, domo natura vel jure vivunt.*) *Calv. Lex. Dig. 50. 16. 195. 2.* Hence the term *pater familias*, (q. v.)

A family or connexion of persons related by blood, and having a common descent. A *familia* was a subdivision of a *gens*. The latter embraced all of the same stock and *nomen*, though most remotely related; the former was more limited, and included especially the *agnati* or relations on the paternal side.\* *Calv. Lex. Dig. 50. 16. 195. 1.* See *Gens, Nomen*.

A family estate or inheritance. *Dig. 50. 16. 195. 1.* See *Familia erciscundæ*.

Family, or family right; one of the three kinds of *status* or conditions of persons. It was applied to a *homo sui juris*, i. e. a Roman citizen who was entitled to enjoy and acquire civil rights in his own name, and to hold other persons in his power. 1 *Mackeld. Civ. Law*, 130, § 119.

FAMILIA. Lat. In old English law. A family or household, including servants, that is, hired persons (*mercenarii* or *conductitii*), as well as bondmen, and all who were under the authority of one master, (*dominus*.) *Bract. fol. 124 b, 171 b.* Bracton uses the word in the original sense, as denoting servants or domestics. *Id. ibid.*

A portion of land sufficient to maintain one family; sometimes called a *hide* of land, sometimes a *manse*, sometimes *carucata* or plough-land. *Cowell. Spelman. Co. Litt. 69 a.* See *Hide*.

FAMILIÆ ERCISCUNDÆ, *Actio*. Lat. In the civil law. An action brought by co-heirs for the partition of their inheritance; (*qua competit cohæredibus de dividenda hæreditate*.) *Inst. 4. 6. 20. Id. 4. 17. 4. Id. 3. 28. 4.* Answering to the modern writ of partition. *Cooper's Notes in loc.* Otherwise termed *judicium familia herciscundæ*. 1 *Mackeld. Civ. Law*, 286, § 271. *Bract. fol. 443 b.*

FAMILIARES REGIS. L. Lat. Persons of the king's household. The ancient title of the "Six Clerks" of chancery in England. *Crabb's Hist. 184. 2 Reeves' Hist. 249, 251. Familier de la chauncery. Kelham.*

FAMOSUS. Lat. [from *fama*, character.] Relating to, or affecting character or reputation; defamatory, slanderous. *Cooke's Law of Defamation*, 483, Appendix, No. II. See *Libellus famosus, Libel*.

Of bad character or repute; infamous. *Inst. 1. 26. 6.*

FANATIO. L. Lat. In old English law. The fawning season, or fence month (*mensis fanationis*), in forests. *Kennett's Gloss.*

FANG, *Fangen*. Sax. To take. See *Infangtheft*.

FARANDMAN. In Scotch law. A merchant stranger. *Skene de Verb. Sig.* cited in *Cowell*. Spelman gives the word *faramannus*, from the laws of the Burgundians, (tit. 54, § 2,) and derives it from Sax. *faran*, or *feran*, to travel.

FARDEL. [L. Lat. *fordella, ferdella*; from Sax. *feorth*, fourth, and *del* or *dæl*, a part.] In old English law. The fourth, (or, according to some, the eighth) part of a yard-land. *Cowell. Blount. Spelman* makes it to be the fourth part, and considers all the words *fardel, fardendel, fardingdel, fardingel, farhindel* and *farundel*, as signifying the fourth part of anything. *Spelman, voc. Fardella*.

FARDINGDEAL, *Fardingdel, Fardindgel, Fardindel, Farhindel, Farundel*. [L. Lat. *quadrantata terræ*.] In old English law. The fourth part of an acre. *Cowell*. But Spelman considers it to be the same with *fardel*, (q. v.)

FARINARIUM. L. Lat. In old European law. A mill. *Spelman*.

FARISTEL. Sax. [from *far*, a way, and *stal*, a stall or stopping.] A stopping or obstruction of ways. *Domesday*. Hence *forestall*, (q. v.) *Spelman*.

FARLEY, *Farleu*. In English law. Money paid by tenants in lieu of a heriot. *Cowell. Blount*. Sometimes written *Far-lief*. 4 *Ad. & El. N. S.* 408. See *Heriot*.

FARLIEF. See *Farley*.

**FARM**, *Fearme*, *Ferm*, *Firma*. [L. Lat. *firma*; L. Fr. *ferme*; from Sax. *fearme*, *feorme*, food or provisions.] In English law. The rent of land held under lease, anciently reserved and paid in *provisions*, (*in eduliis*.) *Spelman*, voc. *Firma*. *Cowell*, voc. *Ferme*. 2 *Bl. Com.* 318. *Gilbert on Rents*, 2. Called by *Spelman* *reditus annonarius*. See *Fearme*, *Feorme*, *Firma*, *Reditus*, *Rent*.

Rent reserved on a lease of land, payable in money; (L. Lat. *reditus pecuniarius*; Fr. *fermage*.) *Spelman*, voc. *Firma*. 2 *Bl. Com.* 318. *Dyer*, C. J., and *Brown*, J., *Plowd.* 195. "If it shall happen that the said annual rent and farm of £37 3s. 4d. or any part thereof, be in arrear and unpaid." *Plowd.* 131. Called *blanche ferme*, or *fearme*, white farm, or white rent, (*alba firma*, *firma blanca*.) to distinguish it from rent paid in provisions. *Spelman*, ub. *sup.* 2 *Bl. Com.* 42. See *Alba firma*, *Blanche ferme*.

A term in lands; that is, an estate granted for a definite period, as for life or years, (usually for years,) on payment of a rent; a lease of land; the estate or interest of a lessee; a leasehold interest in lands. Anciently written *ferm*, (L. Lat. *firma*.) In this sense, the word (*firma*) is constantly employed by *Bracton*. "To let for a *ferm* or farm," (*ad firmam*.) *Bract.* fol. 12 b. "For (to) *farm*, or for life": (*ad firmam*, *vel ad vitam*.) *Id.* fol. 41. "He let to (for a) *farm* for a term of years;" (*dimisit ad firmam ad terminum annorum*.) *Id.* fol. 59. "Saving to the lessee (fermer or farmer,) his *farm* and term"; (*salvo firmario firma et termino suo*.) *Id.* fol. 166 b. 1 *Reeves' Hist. E. Law*, 301, note. *Ferms* and *fermors* are used in the statute of *Marlbridge*, c. 23, s. 2. in the sense of *terms* and *lessees*. 2 *Inst.* 145. *Doct. & Stud.* 233, 234. The old action of *ejectione firmæ*, was for ejecting one from his *ferm* or *farm*, that is, his *term*. See *Ejectione firmæ*. Hence the expression "to let to *farm*," that is, for a *term*. See *To farm let*, *Firma*. This has continued to be the proper technical meaning of the word *farm* in English law, viz.: a term, a lease or leasehold estate; that which is held by a person standing in the relation of tenant to a landlord. *Bro. Abr. Grants*, 135. 2 *Chitty's Bl. Com.* 17, note. 6 *Term R.* 353. 1 *Crabb's Real Prop.* 69, § 87.

Land itself, let and held for a *term* on payment of rent, (*ipsum prædium elocatum*.) 2 *Bl. Com.* 318. *Spelman*, voc. *Firma*. *Gilb. Rents*, 2.—A capital or chief messuage in a vill or town, with great demesnes belonging to it, that has been let

or demised to another for life, for years or at will. *Dyer*, C. J., *Plowd.* 195. *Termes de la ley*. *Cowell*.—In more modern language, a large tract or portion of land taken by a lease under a yearly rent, payable by the tenant. *Tomlins*. In this sense, *farm* is a collective word, consisting of many things, as a messuage, lands, meadows, pastures, woods, and other things appertaining thereto. *Id.* *Plowd.* ub. *sup.* Hence the common or popular significations of the term, now prevalent in England and America,—a tract of land, with suitable buildings, &c., taken, or hired for a certain *term*, at a certain rent, for the purposes of cultivation;—a tract of land, occupied in tillage, or used for *cultivation*, whether held of another, or owned by the occupant;—a tract of land, devoted to other purposes than cultivation, as to the raising of stock, &c. By the name of *farm* or *ferm*, in this sense of a tract of land, houses, lands and tenements might formerly pass; though this is not now its technical meaning in English law. *Co. Litt.* 5 a. See 1 *Crabb's Real Prop.* 69, § 87, cited *supra*. In wills, the word is still construed according to its popular signification. 2 *Powell on Devises*, (by *Jarman*,) 191. 1 *Jarman on Wills*, 713, (609, *Perkins'* ed.) *et seq.*

In American law, *farm* denotes a tract of land devoted in part, at least, to cultivation, without reference to its extent, or to the tenure by which it is held. 2 *Binney's R.* 238. As to what passes by the word *farm*, see 5 *Pick. R.* 512. 18 *Id.* 553. 6 *Metcalf's R.* 529. 4 *Greenleaf's R.* 14. 2 *Hilliard's Real Prop.* 338, 343, 345.

In old English law. Any other thing than land, which is held in lease. *Dyer*, C. J., *Plowd.* 195.

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The present meaning of the word *farm* is very properly termed by Sir Wm. Blackstone, the result of "a gradual departure from the original sense;" its successive gradations of meaning appearing from the definitions above given, viz.: provisions,—rent paid in provisions,—rent paid in money, or generally,—a term in lands, held on rent,—land itself, held for a term and rent,—land held or hired for a term, for cultivation,—any land used for cultivation, whether hired or owned. By this process, the idea of *cultivation* has become the prominent one in the modern acceptance of the term; so much so, indeed, as to have given rise to the modern words now in common use; "*to farm*," to cultivate land; "*farming*," the business of cultivation. In England, however, the ideas of a lease, a term, and a rent, continue to be in a great degree in-

separable even from the popular meaning of a *farm*, as they are entirely so from the legal sense. The ordinary expression "to farm out," is an instance of the perpetuation of the same meaning.

That rents were originally and generally reserved and paid in *provisions*, (*feorme*), is very clearly shown by Spelman from the Black Book of the exchequer, Domesday Book, and other ancient sources. The gradations of meaning from this primitive one (already noticed,) do not, however, seem to have followed in the order of time. *Ferm* (*firma*) was used in the sense of *land leased*, by a chronicler of the time of William Rufus, A. D. 1089. *Spelman*, voc. *Firma*. The same word (*firma*) occurs in the sense of a *lease* of land, in the early historian Ingulphus. *Id. ibid.* And even the Saxon *feorme* was used in Saxon times to denote a manor. *LL. Aluredi*. c. 2, cited *ibid.*

*Farm*, or *ferm*, has been derived by some from the Lat. *firmitas*, firm, or fixed; as denoting a fixed rent, or term. *Lib. Nig. Scacc.* cited in *Spelman*. *Cowell*, voc. *Ferme*. Mr. Reeves inclines to derive it from the Ital. *fermo*, a bargain or contract. 1 *Reeves' Hist. Eng. Law*, 301, note. It is clearly, however, the Saxon word *fearme* or *feorme*, (*provisions*), with a slight change in the letters. *Spelman*, voc. *Firma*. See *Fearme*.

**FARMER**, (anciently FERMOR.) [L. Lat. *firmarius*; L. Fr. *fermer*, qq. v.] In English law. One who held or hired lands for a term, (*ad firmam*), on payment of a rent; (*prædii conductor*.) 2 *Bl. Com.* 318. *Spelman*, voc. *Firma*. — A lessee for life, years, or at will. *Termes de la ley*. 5 Co. 60, *Lord Mountjoy's case*. Hence, by derivation, the modern meanings,—a lessee or hirer of land for cultivation; a cultivator of hired land; a cultivator of land generally. See *Farm*.

A lessee of other things than land. A lessee may be said to be a *farmer* of whatever thing he has in lease. *Dyer*, C. J., *Plowd.* 195. *Stat. Marlebr.* c. 23, [24,] cited *ibid.* See *Ferm*, *Fermor*.

To FARM LET. [L. Lat. *ad firmam locare*, to let to farm.] In conveyancing. Words of operation in leases, introduced at an early period in England. *Dimisi, concessi, et ad firmam tradidi*; have demised, granted, and to farm let. *Co. Litt.* 45 b. 2 *Bl. Com.* 317. They are still generally retained, although not indispensable to the effect of a demise. 1 *Steph. Com.* 476, 477.

The English expression, to farm let, is

clearly taken from the Latin, the order, even, of the words being literally followed; so closely, indeed, as sometimes to convey a wrong idea of the meaning. Thus, "to farm" is treated as a verb, and defined "to yield a return or rent." *Holthouse*. It is, however, obviously merely a very literal translation of the Latin words *ad firmam*, which might be more accurately as well as intelligibly rendered, "for a farm," that is, for a term. See *Farm*, *Firma*, *Ad firmam*. The expressions "to put to farm," (*ad firmam ponere*), "to give to farm," (*ad firmam dare*), occur in records of the reigns of William Rufus, and Henry I. *Spelman*, voc. *Firma*.

**FARUNDEL**. See *Fardel*.

**FAS**. Lat. Right, justice; the divine law. 3 *Bl. Com.* 2. *Calv. Lex. Jur.*

**FASTERMANS**, *Fastermannes*. In Saxon law. Sureties or securities; bondsmen. *LL. Edw. Conf.* c. 39, cited in *Spelman*. See *Fastingmen*.

**FASTI**, (pl. of *Fastus*, lawful.) Lat. In the Roman law. Lawful. *Dies fasti*; lawful days; days on which justice could lawfully be administered by the prætor. See *Dies Fasti*.

**FAULT**. See *Culpa*.

**FATUITAS**. Lat. [from *fatuus*, q. v.] Fatuity, idiocy. *Reg. Orig.* 266. Folly. *Bract.* fol. 99 b.

**FATUITY**. [Lat. *fatuitas*.] Idiocy. *Stock on Non Compotes*, *Introd.* 4—6.

**FATUM**. Lat. Fate; a superhuman power; an event or cause of loss, beyond human foresight or means of prevention. See *Damnum fatale*.

**FATUOUS PERSONS**. Idiots. *Jacob*.

**FATUUS**. Lat. An idiot or fool. *Bract.* fol. 420 b. *Fatuu et idiota*. *Reg. Orig.* 266.

Foolish; absurd, indiscreet or ill considered. *Fatum judicium*; a foolish judgment or verdict. *Bract.* fol. 289. Applied to the verdict of a jury, which, though false, was not criminally so, or did not amount to perjury. *Id. ibid.*

**FAUCES TERRÆ**. Lat. Narrow headlands and promontories, enclosing a portion or arm of the sea within them, [as in a gorge, *fauces*.] 1 *Kent's Com.* 367, and



note. *Hale, De Jure Maris*, 10. Story, J., 1 *Story's R.* 251, 259.

**FAUSEOUR.** L. Fr. A forger, or counterfeit. *De fauseours de seals, et de monoyes.* *Britt.* c. 4.

**FAUSINE,** *Fausyn.* L. Fr. Forgery or counterfeiting. *Britt.* c. 4, 22.

**FAUSENERIE.** L. Fr. Forgery. *Britt.* c. 4.

**FAUTOR.** Lat. [from *favere*, to favor.] In old English law. A favorer, or supporter of others; an abettor. *Cowell. Jacob.* One who encouraged resistance to the execution of process. *Stat. Westm.* 2, c. 39.

**FAUX,** *Falz, Fause, Faiz.* L. Fr. False; counterfeit. *Faux action*; a false action. *Litt.* sect. 688. *Faux money*; counterfeit money. *Stat. Westm.* 1, c. 15. *Faux peys*; false weights. *Britt.* c. 20. *Faux serement*; a false oath. *Stat. Westm.* 1, c. 38.

**FAUXER,** *Fausser, Faucher.* L. Fr. To falsify; to forge or counterfeit. *Fauxer le seal le roy.* *Stat. Westm.* 1, c. 15.

**FE.** L. Fr. Fee. *Kelham.* See *Fee.*

**FEAL.** L. Fr. Faithful. *Britt.* fol. 1.

**FEALTY.** [L. Fr. *feaulté*; L. Lat. *fidelitas*.] In feudal and English law. Fidelity; the feudal obligation by which the tenant or vassal was bound to his lord, to be faithful and true to him, and to perform the services incident to his tenure.\* 1 *Bl. Com.* 367. 2 *Id.* 45.—The bond of fidelity, obedience and service, by which, generally, a subject is bound to his sovereign, particularly a vassal to his lord; (*fidei, obsequii, et servitii ligamen, quo generaliter subditus regi, particulariter, vassallus domino astringitur.*) *Spelman, vocc. Fideles, Fidelitas.* General fealty is otherwise and more commonly called allegiance. 1 *Bl. Com.* 367.

The oath itself (*ipsum fidelitatis iusjurandum*), by which the feudal obligation was assumed, and fidelity to the lord sworn by the tenant. *Spelman. Bract.* fol. 80. *Britt.* c. 68. *Lib. Feud.* 2, tit. 4. *Litt.* sect. 130. The distinction between these two senses of the word is not generally observed; the oath being considered as the obligation itself. 2 *Bl. Com.* 86. 3 *Steph. Com.* 508. 1 *Crabb's Real Prop.* 610, § 770.

Fealty was always considered as the essential feudal bond between lord and vassal, without which no feud could exist. *Fidelitas est de substantia feudi.* *Duarenus de Feud.* cited in *Cowell. Wright on Tenures*, 35. 55. 138. 3 *Kent's Com.* 510. Hence it was always, in England, an indispensable incident to every kind of tenure, except frankalmoigne. In modern times, however, it has fallen into disuse, and it is no longer the practice to exact its performance. *Hargr. Co. Litt.* Note 20, lib. 2. 3 *Kent's Com.* 511, 512. Even in theory, it is now confined to copyhold tenures, and is usually respited by a small payment by the tenant. 1 *Crabb's Real Prop.* 610, 611, § 770.

**FEARE.** L. Fr. To make. *Kelham.* See *Faire.*

**FEARME.** Sax. Food, provisions; a feast or entertainment; (Lat. *cibus, alimentum, cæna.*) *Fearme sillan*; to give food. *L.L. Canut.* par. 2, c. 68, cited *Spelman, voc. Firma.* See *Farm, Feorme.*

**FEASANCE,** *Faisance.* L. Fr. [from *faire*, to do.] A doing; the doing of an act. See *Malfesance, Misfeasance, Nonfeasance.*

A making; the making of an indenture. *Litt.* sect. 371.

**FEASANT,** *Faisant, Fesaunt.* L. Fr. [from *faire*, to do.] Doing.

**FEAT.** L. Fr. Done; a deed. *Kelham.* See *Fait.*

**FECIALES.** Lat. An order of priests or heralds among the Romans, whose office was to declare war and make peace. *Calv. Lex. Jur.* 1 *Kent's Com.* 6. *Brande.*

**FECIAL LAW.** The law relating to declarations of war and treaties of peace among the Romans. So called from the *feciales*, (q. v.) who were charged with its execution.\* 1 *Kent's Com.* 6.

**FEDERAL.** [from Lat. *foedus*, a league or treaty.] Founded upon, or formed by a league, treaty, or compact between independent states. The government of the United States is a federal government, as being formed by the union of several independent states, each surrendering a portion of its power to the central authority. A federal is strictly distinguishable from a national government, (though in the United States the terms are often used indifferently,) the latter being properly an aggrega-

tion of individual citizens. The constitution of the United States is pronounced by Mr. Madison to be neither a national, nor a federal constitution, but a composition of both. *Federalist*, No. 39.

FE'E. An abbreviation of *Femme*, or *Feme*, (q. v.) *Britt.* c. 93.

FEE. L. Fr. & Eng. [L. Lat. *feodum*, *feudum*; Fr. *fief*; Scotch *feu*; from Sax. *feh*, *feoh*, a stipend or reward.] In feudal law. A stipendiary estate, held of a superior by service.\* 1 *Steph. Com.* 161. A right to the use of another's land, as a stipend for services to be performed.\* *Id.* 163. *Spelman*, voc. *Feodum*.

Such estate or right, held as an inheritance.\* *Id. ibid.*

The land itself, held of a superior by service.\* *Id. ibid.* *Wright on Tenures*, 19, 149. 2 *Wooddes. Lect.* 6. See *Feodum*, *Feudum*.

In early English law. That which one holds of another by service, (*quod quis tenet ab alio*.) "As if one should say, such a one holds of me so many fees, by knight-service;" (*ut si quis dicat, talis tenet de me tot feoda per servitium militare*.) *Bract.* fol. 263 b. *Fleta*, lib. 5, c. 5. 2 *Bl. Com.* 105. 1 *Steph. Com.* 219.

That which one holds by any title to him and his heirs; (*id quod quis tenet ex quacunq; causa sibi, et hæredibus suis*.) *Bract.* fol. 263 b. *Fleta*, lib. 5, c. 5. *Britt.* c. 79.

A certain quantity of land, held on condition of service, or held as an inheritance. "He holds so many fees." *Bract. ub. sup.* "To enter one's fee;" (*feodum intrare*.) *Id.* fol. 46, 263 b. *Artic. Cleri*, c. 9. The same as to enter into one's tenement. *Bract.* fol. 46 b. "To distrain one's fee;" (*distringere feodum*.) *Id.* fol. 263 b. *Britt.* c. 27. See *Knight's fee*, *Lay fee*.

A seignior, manor or lordship, as a district of territory or jurisdiction. "Out of his fee or seignior," (*extra feodum*, Fr. *hors de son fee*.) *Co. Litt.* 1 b. *Stat. Marlbr.* c. 2, 15. "In the same vill, and of the same fee," (*in eadem villa, et de eodem feodo*.) *Bract.* fol. 36. *Britt.* c. 21, 55.

An inheritance. "To hold in fee," (*in feodo*.) "In fee, or for life," (*in feodo, vel ad vitam*.) *Bract.* fol. 13 b, 29 b, 30, 31, 32, *et passim*. *Britt.* c. 79.

In modern law. An estate of inheritance. 2 *Bl. Com.* 106. *Litt.* sect. 1. *Co. Litt.* 1 b. See *Fee simple*. This is called by Blackstone the secondary meaning of the term, the primary and original one being, an estate held of a superior.

2 *Bl. Com.* 105, 105. It appears, however, to have been the more important meaning of the two, as early as the time of Bracton, who mentions it first in the order of his definitions. *Bract.* fol. 263 b. Both meanings are still, in England, essential to the idea of a fee, all lands being supposed to be held either mediately or immediately from the sovereign. 1 *Steph. Com.* 173. See *Tenure*. Fee, without other words, means fee simple. *Litt.* sect. 293.

In American law, a fee means an estate of inheritance belonging to the owner and transmissible to his heirs. 3 *Kent's Com.* 514. 4 *Id.* 3, 4.

FEE. A reward or compensation given to one for the execution of his office, or for professional services; as to a clerk, sheriff, attorney, counsellor, or other officer of a court. *Cowell*. This is the primitive meaning of the word, (Sax. *feh*, or *feoh*.) from which *Spelman* derives the term *feodum* or *feudum* itself. *Spelman*, voc. *Feodum*.

The word *fee* occurs in precisely its present form in the law French of Britton, and is used without change by the best writers in that language to the time of Littleton. *Feodum* (q. v.) is the Latin form, employed by Bracton, and other early English writers. The Lat. *feodum* and Fr. *fief* (qq. v.) are used in the feudal law of the continent. *Feu*, (q. v.) has always been peculiar to the law of Scotland. As to the ultimate derivation of the word (of which these are only different forms) various opinions have been entertained. *Cowell* and the author of the *Termes de la ley*, who are followed by Lord Coke, derive *fee* from the Fr. *fief*. *Co. Litt.* 1 b. Mr. Crabb considers it a corruption of *feud*. *Crabb's Hist. E. Law*, 382. Others derive it, through the Lat. *feodum*, from *fides*, (Lomb. & Ital. *fede*.) faith or fidelity. *Connarus*, cited in *Calv. Lex. Jur. Webster*. Others from the Germ. *feud*, war. *Calv. Lex.* Others again from the Græco-latin *emphyteusis* of the Roman law. *Palgrave's Rise, &c.*, p. ccvi. 1 *Spence's Chancery*, 32, note. The most satisfactory derivation, however, both as to form and sense, is that adopted by *Spelman*, from the Sax. *feh* or *feoh*, a stipend or reward. Taking *feoh* as the root, a slight change in the letters, and a much slighter one in the sound produce *feu*, the Scotch word. These two forms Latinized become *feodum* and *feudum* respectively; the letter d being introduced, as *Spelman* observes, for euphony. The French form *fief* is the same word *feu* in different letters,

the change from final *u* to *f*, being a common and very natural one; as in the old word *farleu*, (q. v.) changed into *farlief*. In this way all the old forms are very simply accounted for. In point of sense, on the other hand, the meaning of *feh* or *feoh*, (wages or reward,) accords entirely with the essential idea of the feudal grant of land. The objection to *emphyteusis*, as the origin of *fief* or *fee*, lies not more in the form than in the meaning; *emphyteusis* signifying not only a lease of land for agricultural purposes, but a lease for a very long term, if not in *perpetuity*, which is far from agreeing with the nature of the first feudal grants. See *Feud*, *Feudum*. Besides, if *emphyteusis* supplied the proper idea, it is difficult to see how these grants came to be so long called, (as they first were) *beneficia*. The same objection appears to be applicable to the word *fides*, as the origin of *fee*, which is the opinion adopted by Webster. If *fides* (faith) constituted so essential an idea in the nature of the feudal grant, it is probable that such grant would have been at first called in Latin *feudum* instead of *beneficium*, (q. v.) But the word *feudum* does not, according to the best authority, occur in records until the eleventh century, long after the establishment of the system. See *Feudum*.

If Spelman's opinion be correct, that the old Saxon was the more ancient dialect of the German, it may not be too much to assume that *feoh* was the primitive word used among the ancient Germans to denote a stipend or reward, and would naturally be applied to any kind of property bestowed as a consideration for services. That grants of land in this shape were not unknown to the nations of Northern Europe at a very early period, appears strikingly (as Sir W. Blackstone has observed) from what is recorded by the historian Florus of the Cimbri and Teutones on their irruption into Italy, about a century before the Christian era. It is said that they requested to have a grant of land made to them as a stipend, for which they would perform military and other services, (*ut martius populus aliquid sibi terræ daret quasi stipendium, cæterum, ut vellet, manibus atque armis suis uteretur.*) *L. Florus*, lib. 3, c. 3. It is not therefore unreasonable to suppose that when the feudal system came to be introduced, the grants of land under it were actually called, in the vernacular of those nations who were of German origin, *feohs* or *feus*. The adoption of the Latin word *beneficia* as the earliest appellation on record of the feudal grants, may be accounted for, on the ground of its more fully expressing what

was then the leading idea of those grants, viz.: a thing bestowed by the mere *favor* of the giver or lord, and resumable by him at pleasure. *Lib. Feud.* 1, tit. 1. *Id. lib.* 2. It was also a pure and genuine Latin word, which may have recommended it at a time when the practice of framing barbarous Latin from Teutonic and other stocks had not become fully established. When, however, the feudal grants became hereditary, it was found necessary to adopt a new name, the estate of the tenant being of a more permanent and stable character than was properly expressed by the word *beneficium*. At this very point in history the word *feudum* first occurs, a clearly barbarous or low Latin term; readily framed, we may suppose, by adding to the vernacular *feoh* or *feu*, the usual Latin termination. What strengthens this supposition is the fact that *feoh* now conveyed with great accuracy the leading idea of a feudal estate, viz.: an interest in land held as a stipend, wages or reward for military service, being in the nature of a consideration, or *quid pro quo*, and therefore considered more a matter of right, than *favor*. The first form of *feoh* or *feu* itself, as a term of law, seems to have been the French *fief*. See *Fief*. From this it is not improbable the word *fee* was formed by the Normans and introduced into England; the Scotch adopting, with less alteration of sound, the form *feu*. It may be added that the *eo* in the English *feodal*, *feoffment*, *enseoff*, and the L. Lat. *feodum*, *feoffamentum* and *feoffare*, points very distinctly to *feoh* as its origin, and indeed can be accounted for in no other way.

**FEE-FARM.** [L. Fr. *fee ferme*; L. Lat. *feodi firma*; literally, the farm of a fee.] In English law. Land held of another in fee, in consideration of an annual rent, and without homage, [fealty,] or any other services than were actually specified in the deed of feoffment by which the estate was created. *Cowell. Britt.* c. 66. 2 *Inst.* 44. But, according to Spelman and others, fealty was due in any case. *Spelman*, voc. *Feodi firma. Termes de la ley*.—An estate partaking of the character both of a lease (or farm,) and a fee; or, in other words, an estate in fee, subject to a perpetual (*farm* or) rent. *Hargr. Co. Litt.* Note 235, lib. 2. 2 *Bl. Com.* 43. 2 *Steph. Com.* 27. See *Feodi firma*. In the old books, franchises are said to be granted in (to) fee farm. *Britt.* fol. 2. *Stat. Westm.* 1, c. 31.

**FEE-FARM RENT.** The rent reserved on granting lands in fee farm; the amount of which must have been at least one fourth

of the value of the lands at the time of its reservation. *Co. Litt.* 143 b. It might be one third, or even one half. *Spelman*, voc. *Feodi firma*. *Termes de la ley*. Britton's words are, *a respondre pur eux par an le verrey value, ou plus ou meyns*; (to answer for them yearly the true value, more or less.) *Britt.* c. 66.

Some writers use *fee farm* to signify not only the estate itself (see *Fee farm*.) but the *rent* reserved on it, taking the word *farm* itself in the sense of *rent*. *Hargr. Co. Litt.* Note 235, lib. 2. In that sense, the addition of the word *rent* is clearly superfluous. But as *farm* also signifies a lease, it seems to be more accurate to employ the expression *fee-farm* to denote the estate, and *fee-farm rent* the rent reserved out of it. See *Farm*.

**FEE SIMPLE.** [L. Lat. *feodum simplex*.] A pure fee; an absolute estate of inheritance; that which a person holds inheritable to him and his heirs forever. *Litt.* sect. 1. *Co. Litt.* 1 b. 2 *Bl. Com.* 106. *Termes de la ley*. See *Fee*. Called *simple*, that is, *pure*, because clear of any condition, limitation, or restriction to particular heirs; being descendible to the heirs general, whether male or female, lineal or collateral. 2 *Bl. Com.* 106. *Co. Litt.* 1 b, 2 a. See *Simple*. *Fee* however itself, without the addition of the word *simple*, imports the same thing. *Litt.* sect. 293. *Spelman*, voc. *Feodum*. It is the largest estate and most extensive interest that can be enjoyed in land, being the entire property therein. 2 *Bl. Com.* ub. sup. *Litt.* sect. 11. *Spelman*, voc. *Feodum*. 4 *Kent's Com.* 5. It is created in deeds by the word "*heirs*," (to such a person and *his heirs*.) which is the proper, and at common law, the indispensable word for that purpose, and cannot be supplied by any other, even "*heir*" in the singular. *Co. Litt.* 8 b. 2 *Preston on Estates*, 8. But see 4 *Kent's Com.* 5, note. So that, if a conveyance be "to a man forever," or "to a man and his assigns forever," or "to a man and his heir," he will have but an estate for life. *Termes de la ley*. *Wharton's Lex.* 4 *Kent's Com.* 5, 6. This rule, however, has been modified in regard to wills; and, in American law in some cases entirely abolished by statute. *Id.* 6—8, and notes. 1 *Hilliard's Real Prop.* 609. See *Heirs*.

**FEE TAIL.** [L. Fr. *fee taille*; L. Lat. *feudum talliatum*; from Fr. *tailler*, to cut.] A limited or restrained fee; literally a *cut* fee. An estate of inheritance limited and

restrained to some particular heirs of the person to whom it is granted, in exclusion of others. 2 *Crabb's Real Prop.* 22, 23, § 971. Called *tail*, that is, *cut*, according to some, because cut, clipped, or pared down (*amputatur et rescinditur*.) to certain heirs. *Spelman*, voc. *Feodum*. 8 *Co.* 27. *Cowell*. And this accords with the meaning of *feudum talliatum* among the feudists; a mutilated or truncated inheritance, a fee curtailed of its proper quantity or extent. According to others, because it is a particular estate *cut out* of the old conditional fee simple, by the operation of the statute *de donis*. *Crabb's Hist.* 177. 2 *Bl. Com.* 112. 1 *Steph. Com.* 228. 2 *Crabb's Real Prop.* 21—23, §§ 970, 971. As to fees tail in American law, see 4 *Kent's Com.* 14—19, and notes.

**FEFFE.** L. Fr. A feoffee. *Britt.* c. 34, 42.

**FEFFEMENT.** L. Fr. A feoffment. *Britt.* c. 34, 47.

**FEFFOUR.** L. Fr. A feoffor. *Britt.* c. 34, 42.

**FEIGNED ISSUE.** In practice. An issue produced in a pretended action between two parties, for the purpose of trying a single question of fact, which it becomes necessary to determine in the progress of a cause.\* It is frequently directed by a court of chancery, to determine the fact of adultery, of the validity of a will, &c., and sometimes, though rarely, by a court of law. The issue is produced upon a declaration and plea; the plaintiff declaring, by a fiction, that he laid a wager of so much with the defendant, that a certain fact was so, and then avers that it is so, and therefore demands the sum wagered; the defendant admitting the feigned wager, but denying that the fact is so. Issue is thereupon joined as to the fact, and brought to trial like any other issue of fact, and the verdict of the jury determines the question. 3 *Bl. Com.* 452.

This has sometimes been defined a *fictional issue*. The fiction however is not in the issue, which is real, as are the pleadings; but in the *action* which is supposed to be brought, and in the state of facts (the wager,) upon which it is founded, which in reality have no existence. By the English statute 8 & 9 Vict. c. 109, s. 19, any question of fact may now be referred to a jury, by any court either of law or equity, in a direct form, in lieu of a feigned issue. 4 *Steph. Com.* 28.

FEINT ACTION. See *Faint action*.

FELAGUS. L. Lat. [from Sax. *fe*, faith, and *lag*, bound.] In Saxon law. One bound or pledged for another. A friend who was bound in the decennary for the good behaviour of another; called by Spelman *socius individuus*, and *comes vitæ*; an inseparable companion, or companion for life. Spelman in voc. A sworn brother. *LL. Will. Cong.* cited in *Blount*. The *felagus* was a very important person in the Saxon law, and took the place of a man's parents or lord, where he had neither. *LL. Edw. Conf.* cc. 15, 35. From this word, changed into *felawe* by the Anglo-Normans, Spelman derives the word *fellow*.

FELE, *Feal*. L. Fr. Faithful. See *Feal*.

FELO. L. Lat. A felon. *Bract.* fol. 30. See *Felon*.

FELO DE SE. L. Lat. [L. Fr. *felon de luy mesme*.] A felon of himself; a self murderer. One who deliberately puts an end to his own existence, or commits any unlawful malicious act, the consequence of which is his own death; as if, attempting to kill another, he runs upon his antagonist's sword, or shooting at another, the gun bursts, and kills himself. *Hawk. P. C.* b. 1, ch. 27. 1 *Hal. P. C.* 413. The party must be of years of discretion, and in his senses, else it is no crime. 4 *Bl. Com.* 189. 4 *Steph. Com.* 109.

Suicide (in the sense of intentional self-destruction,) has always been regarded as a crime in English law, punished with forfeiture of goods and chattels, and, until recently, branded by an ignominious burial in the highway, with a stake driven through the body. 4 *Chitty's Bl. Com.* 190. By the act of 4 Geo. IV. c. 52, § 1, this barbarous kind of burial was abolished, and the bodies of suicides were directed to be interred in church yards, or other ordinary burial grounds, but under marked circumstances indicative of the law's abhorrence of the crime; the interment being ordered to take place *at night*, and without the performance of any *christian rites*. *Id.* *ibid.* note. Suicide does not seem to be regarded as a crime in the United States.

FELON. L. Fr. & Eng. [L. Lat. *felo*.] One who has committed, or is guilty of felony. See *Felony*.

FELONIA, *Fallonia*. L. Lat. Felony.

*Bract.* fol. 29 b, 30. In *felonia*; feloniously. *Id.* fol. 121, 138, 146. *Felonia de seipso*; felony of himself. *Id.* fol. 150.

In the feudal law. The act or offence by which a vassal lost or forfeited his fee. *Fallonia est culpa seu injuria propter quam vasallus amittit feudum. Hostiens. de Feud. Spelman, voc. Felo. Calv. Lex. Jur. voc. Fallonia.*

*Felonia implicatur in qualibet preditione.* Felony is implied in every treason. 3 *Inst.* 15.

FELONICE. L. Lat. Feloniously. Anciently an indispensable word in indictments for felony, and classed by Lord Coke among those *voces artis*, (words of art,) which cannot be expressed by any periphrasis or circumlocution. 4 *Co.* 39. *Co. Litt.* 391 a. 4 *Bl. Com.* 307. Bracton uses the expression in *felonia*, which means the same thing. See *Felonia*.

FELONIE. L. Fr. Felony. *Britt.* c. 1, 4, 5, 6, 20, 22.

FELONIOUS. Having the quality of felony. See *Felony*.

Criminal. 2 *N. Y. Rev. St.* [702.] 587, § 31. This is rather the popular, than the technical meaning.

FELONIOUSLY. [L. Fr. *felonisement*; L. Lat. *felonicé*.] An indispensable word in modern indictments for felony, as *felonice* was in the Latin forms. 4 *Bl. Com.* 307. See *Felonicé*. Made synonymous with "*criminally*" by 2 *N. Y. Rev. St.* [702.] 587, § 31.

FELONIOUS HOMICIDE. In criminal law. The offence of killing a human creature of any age or sex, without justification or excuse. 4 *Bl. Com.* 188. There are two degrees of this offence, manslaughter and murder. *Id.* 190. 4 *Steph. Com.* 108, 111.

FELONISEMENT. L. Fr. Feloniously. *Britt.* c. 22.

FELONY. [L. Lat. *felonia*, *fallonia*; from Sax. *feh*, fief, feud, or fee; and Germ. *len*, price or value; the cost of one's fee, (Lat. *pretium feudi*;) or from Sax. *faelen*, *felen*, to fail, fall, offend. Spelman.] In feudal law. An act or offence on the part of the vassal, which cost him his fee; or, in consequence of which his fee fell into the hands of his lord, that is, became forfeited. See *Felonia*.

The word *felony* is clearly derived from the *felonia* of the feudal law, though the latter, according to Dr. Wooddesson, rarely occurs in any ancient code. It is to be met with, however, in the collection of Sicilian laws by Lindenbrog, and more frequently in the Book of Feuds. 2 Wooddes. Lect. 306, note. Spelman, voc. *Felo*. Though properly denoting merely the forfeiture of a fee, it seems to have acquired the same sense it bears in the common law, viz., a heinous crime of any sort. Hotoman (*de Verb. Feud.*) defines it to be any capital offence; (*quodvis capitale facinus.*) Cowell.

Of the two etymologies of this word given by Spelman, (*supra.*) Sir William Blackstone has adopted that which derives it from the two words *fee* and *lon*. 4 Bl. Com. 95. Dr. Wooddesson prefers that from *falen*, and considers the other derivation far fetched. 2 Wooddes. Lect. 306. It is a very judicious remark of the writer last quoted, on the subject of etymology, that "words are oftener deduced from some ~~one~~ single word, than from two or more." *Id. ibid.* The division of words into parts, and the attempt to account for the formation of each part as a distinct and original element of composition, have often led to the most fantastic and absurd derivations. See *Agreementum, Testament*.

**FELONY.** [L. Fr. *felonie*; L. Lat. *felonia*.] In criminal law. An offence which occasions a total forfeiture of either lands or goods, or both. 4 Bl. Com. 95, 98.

An offence punishable by forfeiture, and also by death or other punishment. *Id. ibid.*

An offence punishable by death, or by imprisonment in a state prison. 2 N. Y. Rev. St. [702,] 587, § 30.

This term, and its peculiar import of *forfeiture*, are derived from the feudal law, (*supra.*) and in England forfeiture is still the true criterion of felony. 4 Bl. Com. 97. 4 Steph. Com. 61. The punishment of death also enters in a great degree (though not necessarily nor uniformly) into the idea of felony. 4 Bl. Com. 97, 98. Hence, Blackstone has defined it to be "an offence which occasions a total forfeiture of either lands or goods, or both, at the common law, and to which capital or other punishment may be superadded, according to the degree of guilt." *Id.* 95. In American law, forfeiture as a consequence of crime being generally abolished, the word *felony* has lost its original and characteristic meaning, and is rather used to denote any

high crime that is punishable by death or imprisonment. See the New-York definition, *supra.* U. S. Digest & Supplement, Felony. Felony is indeed, properly, rather a generic term, denoting a certain class of offences, than any one in particular. In England, it includes all capital crimes below treason, and, strictly, treason also. 4 Bl. Com. 95, 98. 3 Inst. 15.

**FELONY, COMPOUNDING OF.** See *Compounding Felony*.

**FEM.** A form of writing *feme*, (q. v.) Frequent in Coke and other old writers.

**FEME, Fem, Femme, Fam.** L. Fr. [from Lat. *femina*.] A woman; a wife. *Si prent la feme a feme*; if he take the woman to wife. Litt. sect. 665. *Le baron et la feme sont forsque come une person en ley*; the husband and the wife are but one person in law. *Id. ibid.*

**FEME COVERT, Femme Couverte.** L. Fr. [L. Lat. *femina co-operta*.] A married woman. 1 Bl. Com. 442. 2 Steph. Com. 298. See *Covert Baron, Coverture*.

**FEME SOLE.** L. Fr. [Lat. *femina sola*.] A sole, single or unmarried woman.

**FEME SOLE TRADER, (or MERCHANT.)** In English law. A married woman, who, by the custom of London, trades on her own account, independently of her husband; so called, because, with respect to her trading, she is the same as a *feme sole*. Jacob. Cust. of Lond. cited 3 Burr. 1776. Cro. Car. 68.

The term is applied also to women deserted by their husbands, who do business as *femes sole*. 1 Peters' R. 105.

**FEMELE.** L. Fr. Female. *Soit masle soit femele*; be it male or female. Britt. c. 18.

**FEMME.** L. Fr. A woman or wife. Britt. c. 24, 102, 108. See *Feme*.

**FENATIO, Feonatio.** L. Lat. [from Fr. *faon*, a fawn.] In forest law. The fawning of deer; the fawning season. Spelman.

**FENCE MONTH.** [L. Lat. *mensis prohibitionis, mensis vetitus*.] In forest law. The prohibited month. A period of thirty-one days in the year, during which time it is unlawful for any man to hunt in the forest, because at that time the female

deer are fawning. This period commences fifteen days before midsummer, and continues until fifteen days after. It is also called *defence month*, for the same reason, *defence* meaning *prohibition*; or, according to some, because the deer are then to be *defended* from the annoyance of sportsmen and others. *Termes de la ley. Manwood. Cowell. Spelman. Blount.*

**FENGELD.** Sax. [from *fen*, enemies, and *geld*, money or tribute.] In Saxon law. Money or tribute exacted for the repelling of enemies. *Spelman. Cowell.*

**FEOD.** [L. Lat. *feodum*.] Supposed by some to be the primitive word expressive of a feudal grant or estate; and from which the Lat. *feodum* was immediately formed; (Sax. *feohod*, from *feoh*, a stipend, and *hod*, state or condition. *Spelman*. Or, *feodh*, from *fee*, a stipend, and *odh*, property. 2 *Bl. Com.* 45, note.) The better opinion, however, seems to be that *feodum* was formed simply from *feoh*, the primitive word; and that *feod* is merely the Anglicized form of *feodum*, as *feud* is of *feodum*. See *Feodum, Feoh*. It is not used by Blackstone, though its derivative *feodal* is uniformly. See *Feodal, Feudum*.

**FEODA.** (pl. of *Feodum*, q. v.) Fees. *Cum feodis et proficuis*; with the fees and profits. *Plowd.* 12 a, arg.

**FEODAL.** [L. Lat. *feodalis*.] Relating to, belonging to, or having the quality of a *feod*, *feud*, or fee; feudal. 2 *Bl. Com.* 44, *et passim*, in book 2, chap. 4. *Cowell*. This word is uniformly used by Blackstone in preference to *feudal*, probably after the example of the old writers, and the constant use of *feodum* in Bracton, the Register and Magna Charta, instead of *feudum*. So the Lat. *feodalis* generally occurs in the Scotch writers.

**FEODAL ACTIONS.** Real actions; so called in the old books, as originally relating to *feoda*, fees, or estates in land. *Mirr.* c. 2, § 6. 3 *Bl. Com.* 117.

**FEODALITY, Feudality.** [L. Lat. *feodalitas*.] Fidelity or fealty. *Cowell. See Fealty.*

**FEODARY. Feudary.** [L. Lat. *feodarius*.] In English law. An ancient officer of the court of wards, appointed by the master of that court by virtue of the statute 62 Hen. VIII. c. 46. Abolished by stat.

12 Car. II. c. 24. *Cowell. Kennett's Gloss. ibid.*

**FEODATORY, Feudatory.** In feudal law. The grantee of a *feod*, *feud* or fee; the vassal or tenant who held his estate by feudal service. *Termes de la ley. Blackstone uses feudatory.* 2 *Bl. Com.* 46.

**FEODI FIRMA.** L. Lat. In old English law. Fee farm; the farm of a fee. *Magna Charta.* c. 27.

*Feodi firmarius*; the lessee or farmer of a fee; a fee-farmer; one who held in fee farm. *Bract.* fol. 165 b. See *Fee farm*.

**FEODUM.** L. Lat. [from Sax. *feoh*, a stipend, or fee.] In old English law. A fee; the same as *feudum*. See *Fee, Feudum*. This is the word uniformly employed by Glanville and Bracton to denote an estate of inheritance, and an estate held of another by service, instead of *feudum*, which is invariably used by the continental feudists. *Spelman. Feodum est id quod quis tenet ex quacunque causa, sibi et hæredibus suis*; fee is that which one holds by any title, to him and his heirs. *Bract.* fol. 263 b. *Item dicitur feodum alio modo—quod quis tenet ab alio*; that also is called fee in another sense, which one holds of another. *Id. ibid.* *Feodum* is also the form used in the Register, and Magna Charta. *Reg. Orig.* 2, 3, 226. *Mag. Chart.* c. 2, *et passim*. The same form is used by Littleton. *Feodum idem est quod hæreditas*; fee is the same as inheritance. *Litt.* sect. 1. *Spelman* uses *feodum* and *feudum* indifferently.

*Feodum laicum*; a lay fee. *Glanv.* lib. 13, c. 23. *Bract.* fol. 175. *Magna Charta*, c. 18. See *Lay Fee*.

*Feodum militis*, or *militare*; a knight's fee. 2 *Bl. Com.* 62. 1 *Steph. Com.* 176. See *Knight's fee*.

*Feodum improprium*; an improper or derivative fee or feud. 2 *Bl. Com.* 58. See *Feudum improprium*.

*Feodum proprium*; a proper, pure and original fee or feud, regulated strictly by the old fundamental rules of feudal tenure and succession. 2 *Bl. Com.* 58. See *Feudum proprium*.

*Feodum simplex*; fee simple; a simple or pure fee. *Litt.* sect. 1. See *Fee simple*.

*Feodum talliatum*; fee tail; a fee entailed; a cut fee. *Litt.* sect. 13. See *Fee tail*.

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*Feodum* has the merit of pursuing more closely than *feudum*, the form and sound of the primitive *feoh*, from which there is little doubt of its being framed, the *h* being

changed into *d* for euphony (*feodum*, instead of *feohum*.) *Spelman*. *Wachter Gloss.* in voc. The proper meaning of *feodum* is obviously *fee*, although, (in consequence, probably, of the established meaning of *fee* in modern law—an estate of inheritance,) some English writers, especially of late, have thought fit, by way of clearer distinction, to designate the ancient feudal grant as a *feod*. See *Feod*.

**FEOFAMENTUM.** L. Lat. [from *feoffare*, q. v.] In old English law. A feoffment; the gift of a fee; the act of enfeoffing. *Spelman*, voc. *Feoffare*. More commonly written *feoffamentum*, (q. v.)

**FEOFARE.** L. Lat. To enfeoff. *Spelman*. See *Feoffare*.

**FEOFFAMENTUM.** L. Lat. [from *feoffare*, to enfeoff.] In old English law. A feoffment. *Bract.* fol. 12 b, 17 b, et passim. 2 *Bl. Com.* 310. *Charta de puro feoffamento est de simpliciter feoffamento, sine aliqua adjectione*; a charter of pure feoffment is a charter of simple feoffment, without any addition. *Bract.* fol. 33 b. See *Feoffment*, *Feoffare*.

**FEOFFARE, Feoffare.** L. Lat. [from Sax. *feoh*, a fee.] In old English law. To enfeoff; to give or bestow a fee; (*feodum dare*.) *Bract.* fol. 17 b, 29 b, 44 b. *Stat. Marlbr.* c. 6. *Et si taliter feoffatus aliquem ulterius inale feoffaverit, tenet feoffamentum*; and if one so enfeoffed, enfeoff another thereof over, the feoffment holds. *Bract.* fol. 17 b. *Si feoffavero A. et A. B. &c.*; if I enfeoff A., and A., B. &c. *Id.* fol. 81. *Feoffavi*; I have enfeoffed. This word, according to Mr. Reeves, was not employed in deeds of feoffment till the reign of Richard II. 1 *Reeves' Hist. E. Law*, 91.

*Feoffare* points even more plainly than *feodum* to the primitive word *feoh* as its origin; *feoffare* (*Spelman's* mode of writing it) being scarcely distinguishable in sound from *feohare*, which may have been its first form as a verb.

**FEOFFATOR.** L. Lat. [from *feoffare* q. v.] In old English law. A feoffor; one who gives or bestows a fee; one who makes a feoffment. *Bract.* fol. 12 b, 81.

**FEOFFATUS, Feofatus.** L. Lat. [from *feoffare*, q. v.] In old English law. A fee; one to whom a fee is given, or a feoffment made. *Bract.* fol. 17 b, 44 b.

**FEOFFMENT, Feffement.** L. Fr. &

Eng. [L. Lat. *feoffamentum*, q. v.] The gift of a fee (*donatio feudi*.) A gift or conveyance in fee, of land, or other corporeal hereditaments, accompanied by livery of seisin, or actual delivery of possession. *Bract.* fol. 12 b. *Britt.* c. 34. *Co. Litt.* 9 a. 2 *Bl. Com.* 310, 311. 4 *Kent's Com.* 480, 481—A conveyance of corporeal hereditaments by delivery of the possession upon, or within view of the hereditaments conveyed. *Butler's Co. Litt.* Note 231, lib. 3.

The deed, instrument, or *charter*, (as it was formerly most commonly termed,) by which such a donation is expressed. 2 *Bl. Com.* 310. *Shep. Touch.* 203. 4 *Kent's Com.* 480. See *Feoffamentum*, *Charta*. For a form of this kind of deed in the original Latin, see 2 *Bl. Com.* Appendix, No. 1. Anciently, a feoffment might be without deed, the donation with which the livery was accompanied being merely oral, but it was usually put into writing. 1 *Reeves' Hist. E. Law*, 90. *Poterit fieri donatio cum charta, vel sine charta.* *Bract.* fol. 11 b. By the statute of frauds, a written instrument was expressly required to convey the fee. 1 *Steph. Com.* 218. See *Stat. 8 & 9 Vict.* c. 106, § 3.

A feoffment originally meant the grant of a *feud* or *fee*, that is, a barony or knight's fee, for which certain services were due from the feoffee to the feoffor. This was the proper sense of the word; but by custom it came afterwards to signify also a grant, (with livery of seisin,) of a free inheritance to a man and his heirs, referring rather to the perpetuity of the estate than to the feudal tenure. 1 *Reeves' Hist. E. Law*, 90, 91. *Mad. Form. Angl. Diss.* p. 4. *Butler's Note*, 231, lib. 3. *Co. Litt.* It was for ages the only method (in ordinary use) for conveying the freehold of land in possession, but has now fallen in great measure into disuse, even in England, having been almost entirely supplanted by some of that class of conveyances founded on the statute law of the realm. 1 *Steph. Com.* 487, 488. In American law it is scarcely known. 2 *Hilliard's Real Prop.* 293, et seq.

Littleton uses *feoffment* in its present form, but Britton writes it *feffement*.

**FEOFFEE.** L. Fr. & Eng. [L. Fr. *feffe*; L. Lat. *feoffatus*.] The person to whom a feoffment is made; the person enfeoffed. 2 *Bl. Com.* 310. *Litt.* sect. 1, 57. See *Feoffment*.

**FEOFFEE TO USES.** The person to whom a feoffment was made, upon the trust



or confidence that he should hold the land to the use of some third person, or of the feoffor himself. *Cruise Dig.* tit. xi, ch. 2.

**FEOFFOR.** L. Fr. & Eng. [L. Fr. *feffour*; L. Lat. *feoffator*.] The person making a feoffment, or enfeoffing another in fee. 2 *Bl. Com.* 310. *Litt.* sect. 1, 57. See *Feoffment*.

**FEOH.** Sax. A stipend; wages; reward; fee. This seems to have been the primitive word used in the vernacular of the Teutonic nations, to denote a feudal grant of lands; and from which were formed the French *fief*, L. Latin *feodum* and *feudum*, Scotch *feu*, and English or Anglo-Norman *fee*. See *Fee*, *Feod*, *Feodum*.

**FEORME**, *Fearme*. Sax. [L. Lat. *firma*.] Food; provisions. *Spelman*, voc. *Firma*. An entertainment or feast. *Id.* Herod *gegeafwode mycle feorme*; Herod made a great feast. *Sax. Evang. S. Marc.* vi. 21.

Rent paid in provisions. *Spelman*, ub. *sup.* *Cowell*, voc. *Ferne*. 2 *Bl. Com.* 318. A manor. *Spelman*, ub. *sup.* Hence the L. Lat. *firma*, and English *firm*, *farm*, (qq. v.)

**FER**, *Ferre*. L. Fr. [from Lat. *ferrum*.] Iron. *Hors de fers*; out of irons; not fettered. *Britt.* c. 5.

**FERÆ NATURÆ.** Lat. Of a wild nature. A term (derived from the civil law), applied to animals considered as subjects of property, and denoting such as are naturally of a wild disposition, (as deer, foxes, hares, pigeons, wild geese, swans, bees and fish,) in contradistinction to those of a tame and domestic nature (*domitæ naturæ*.) *Inst.* 2. 1. 12—16. *Bract.* fol. 8 b, 9. 2 *Bl. Com.* 390, 391. 2 *Steph. Com.* 17, 68, 69. 2 *Kent's Com.* 348. 6 *Ad. & Ell.* (N. S.) 606. See *Domitæ naturæ*, *Qualified property*. Bracton distinguishes animals into three classes; wild animals, properly so called, (*fera*;) wild animals which have been tamed, (*fera facta mansueta*;) and domestic animals, (*domestica*.) *Bract.* ub. *sup.*

**FERDFARE.** See *Firdfare*.

**FERDINGEL.** Used in Domesday for *ferdindel*. See *Fardel*, *Fardingdeal*.

**FERDWITE.** See *Firdwite*.

**FERE**, *Ferre*, *Feor*. L. Fr. To make

or do. *Kelham*. Old forms of *faire*, (q. v.)

**FERIA.** L. Lat. In old English law. A week day, (*dies ferialis*), as distinguished from Sunday. *Spelman*.

A holiday; a day exempt from judicial process. *Cowell.* 4 *Reeves' Hist. E. Law*, 17.

A fair. *Bract.* fol. 56 b. *Spelman.* *Lib. Rames*, cited *ibid*.

**FERIA.** L. Lat. [from Sax. *fare*, passage, and *eie*, water.] In old English law. A ferry. *Spelman*. See *Ferry*.

**FERIAL DAYS.** [L. Lat. *dies feriales*, *feriæ*.] In old English law. Holidays. *Cowell*.

Working days, or week days, as distinguished from Sunday. *Stat.* 27 *Hen.* VI. c. 5.

**FERITA.** L. Lat. In old European law. A wound; a stroke. *Spelman*.

**FERLINGATA.** L. Lat. In old English law. A quarter of a yardland. *Cowell*. See *Fardel*, *Fardingdeal*.

**FERLING.** [L. Fr. *ferlinge*, L. Lat. *ferlingus*; from Sax. *feorthling*.] In old English law. A fourth or quarter. The fourth part of a penny. *Spelman.* *Cowell*.

**FERLINGUS.** L. Lat. A furlong. *Co. Litt.* 5 b.

**FERM**, *Fearme*. [L. Fr. *ferme*, L. Lat. *firma*; from Sax. *feorme*, q. v.] In old English law. A rent. *Spelman*, voc. *Firma*. 2 *Reeves' Hist. E. Law*, 402.

A lease or term for years. *Stat. Marl.* c. 24. 2 *Inst.* 145.

A house or land, or both, taken by lease. *Cowell*, voc. *Ferne*. See *Farm*, *Firma*.

**FERME.** L. Fr. [from Sax. *feorm*, q. v.] A rent; a farm; a lease on rent. *Si home lessa sa terre a ferme*; if a man let his land to farm. *Stat. Gloc.* c. 4. *Lesses a ferme.* *Artic. sup. Chart.* c. 14. *Britt.* c. 40. *Lesse a ferme*—a *trop hautes fermes*; let to farm at too high farms, (rents.) *Britt.* c. 21.

**FERMER.** L. Fr. [from *ferme*, q. v.] A lessee; a termor; one who held lands to farm; one who held a term in lands. *Britt.* c. 43, 64, 75. This word is used by Britton indifferently with *termor*, and in the same passage. *Id.* fol. 201 b.

**FERMOR.** [L. Fr. *fermer*; L. Lat.

*firmarius*, qq. v.] A lessee; one who held a ferm or term. Hence the modern *farmer*. Held to be not a good addition. *Yearbook*, T. 28 Hen. VI. 4. See *Farmer*, *Firmarius*.

**FERMORY**, *Firmary*. [L. Lat. *firma-rium*.] A place in monasteries, where they received the poor, (*hospicio excipiebant*), and gave them provisions, (*ferm*, *firma*.) *Spelman*. Hence the modern *infirmary*, used in the sense of a hospital. *Id.*

**FERNIGO**. L. Lat. In old English law. A waste ground, or place where fern grows. *Cowell*.

**FERRAMENTUM**. (pl. **FERRAMENTA**.) Lat. [from *ferrum*, iron.] In old records. The iron tools or instruments of a mill; iron work in general. *Lib. Nig. Heref. Blount*.

**FERRIFODINA**. Lat. An iron mine. *Towns. Pl.* 273.

**FERRILIMINATIO**. L. Lat. The cementation or welding of iron. *Bract. fol.* 9 b. Probably a corruption of *ferruminatio*, (q. v.)

**FERRUMINATIO**. Lat. In the civil law. A welding together. *Dig.* 6. 1. 23. 5.

**FERRY**. [L. Lat. *feria*, q. v.] A species of franchise, being a liberty or privilege, arising from grant or prescription, to have a boat or boats for carrying men and horses across a river for reasonable *fare* or toll. *Termes de la ley. Tomlins.* 3 *Kent's Com.* 458, 421, note.

**FESAUNT**. L. Fr. [from *faire*, to do.] Doing. An emphatic word in old deeds. *Britt.* c. 39.

**FESOUR**. L. Fr. [from *faire*, to do.] A doer; an actor; the perpetrator of a crime. *Les principaux fesours*; the principal actors. *Britt.* c. 5. *Fesours de teles noysaunce*; the makers of such nuisance. *Id.* c. 20.

**Festinatio justitie est neverca infortunali.** The hurrying [hasty administration] of justice is the stepmother of misfortune. *Hob.* 97. The word *festinatio* in this maxim is strangely translated both in Branch's *Principia* and Wharton's *Lexicon*, *delay*.

**FESTINGMAN**. [Sax. *festenmon*.] In old English law. A surety or pledge; frankpledge. *Cowell*.

**FESTING PENNY**. [from Sax. *fast-nian*, to fasten.] In English law. Earnest given to servants when hired, or retained in service. *Cowell. Blount*. Still in use in some parts of England, under the name of *fastening penny*; though a shilling is the amount actually paid. *Howitt's Rural Life of England*, p. 416. (Phil. ed. 1841.)

**FESTINUM REMEDIUM**. Lat. A speedy remedy. A term applied by the statute of Westminster 2, (13 Edw. I.) c. 24, to the writ of assise, as compared with the more dilatory remedies previously in use. 3 *Bl. Com.* 184.

**FESTUM**. Lat. A feast. *Tomlins*.

**FET**. L. Fr. Done; made. *Kelham*. An old form of *fait*.

Fact; a fact, deed, matter or business. *Issue en fet*; issue in fact. *Yearbook*, 3 *Edw.* II. 59.

*Fetz, Feyetz, Fez.* Deeds, actions, grants. *Kelham*.

**FET ASSAVOIR**. L. Fr. (Literally, a matter to be known or understood.) The title of a small French tract, published at the end of Fleta. 2 *Reeves' Hist. E. Law*, 281. *Selden's Diss. ad Flet.* c. 1, sect. 1. The expressions *fait assavoir*, *fait a savor* are common in the old books. *Britt.* c. 4, 39.

**FEU**, *Fieu, Fiew*. L. Fr. Fire; a fireplace, or hearth. *L. Fr. Dict. Kelham*.

**FEU**. [L. Lat. *feudum*, q. v.] In Scotch law. A free and gratuitous right to lands, made to one for service to be performed by him, according to the proper nature thereof. *Scotch Dict.* Lands taken by purchase are called *feus of conquest*. *Ersk. Princ.* b. 3, tit. 8, s. 6. 1 *Reeves' Hist. E. Law*, 29, note.

*Feu* is derived either from the Fr. *fiel*, by a slight change in the letters, or from the Lat. *feudum*, by abbreviation, or it may be directly from the primitive Sax. *feoh*, the sound of which it retains with very little variation. *To feu* is used as a verb in old statutes. *Stat. Jac.* VI. A. D. 1581.

**FEU-HOLDING**. In Scotch law. That kind of tenure by which the vassal or tenant is obliged to pay to the superior a sum of money yearly, or to make a return in grain in place of military services. *Bell's Dict.* 1 *Forbes' Inst.* part 2, p. 98.

**FEU-ANNUALS**. In Scotch law. The

rent due under the tenure of feu-holding. *Scotch Dict.*

**FEUD, Feid.** [L. Lat. *faida, feida*.] A combination of kindred to revenge injuries or affronts done or offered to any of their blood. *Whishaw*. See *Faida, Deadly feud*.

**FEUD.** [L. Lat. *feudum, feodum*; Fr. *fief, Scotch feu*.] A stipendiary estate in land, held of a superior, by service. 1 *Steph. Com.* 161.—A right which a vassal had in land, or some other immovable thing of his lord's, to use the same and take the profits thereof hereditarily, rendering unto his lord such feudal duties and services as belonged to military tenure, the mere property of the soil always remaining unto the lord. *Spelman Feuds & Tenures*, c. 1. See *Fee, Feod, Feud*.

This word is used by Blackstone and other writers, as the translation of the Lat. *feudum*, in preference to the proper English word *fee*, apparently with the view of more aptly distinguishing the original feudal grant or estate, from the *fee* of modern law. As the English word *feud*, however, has long had a peculiar meaning of its own, (*supra*,) it would seem preferable to employ the Fr. *fief* as the translation of *feudum*, especially where reference is had to the feudal law of the continent. This is the term used by Dr. Robertson, in his History of Charles V. See *Fief, Feodum*.

**FEUDAL.** Relating or belonging to, or having the quality of a *feudum*, *fief* or *fee*. That which is held of another by service; the opposite of *allodial*. See *Allodial*.

**FEUDAL LAW.** [Lat. *Lex Feudalis*; *Jus Feudorum*.] The law of feuds, or feudal estates. That peculiar system of law by which the creation, enjoyment and transmission of feudal estates were regulated, and the rights and duties growing out of the feudal relation of lord and vassal, defined and enforced. It originally consisted of unwritten customs and usages, which were first reduced to writing about the middle of the twelfth century, in the compilation known as the *Consuetudines* or *Libri Feudorum*, commonly called the Book of Feuds or Fiefs. See *Feudorum Libri*. It was the law of nearly all Europe during the prevalence of the feudal system, and many of its principles, including the fundamental one of *tenure*, continue to be recognized at the present day. See *Craig*

*Jus Feudale*, lib. 1. dieg. 4. *Sullivan on Feudal law*, lec. 3. 2 *Bl. Com.* 44, *et seq.* 3 *Kent's Com.* 489, *et seq.*

**FEUDAL SYSTEM.** The system of *feuds* or *fiefs*; that is, estates in land held of a superior by the tenure of service. A system of tenure, the origin of which is generally traced to the peculiar policy and usages of the northern nations who overturned the Roman empire, and settled in its provinces; and which from rude beginnings grew up gradually into a vast body of institutions, which prevailed throughout Europe for many centuries, and has left important traces of its existence not only in that continent, but in America. The nature and history of this system have been so often discussed that it will be sufficient to refer to the leading authorities on the subject. 2 *Bl. Com.* 44, chap. iv. 1 *Steph. Com.* 160, *et seq.* 3 *Kent's Com.* 487, lect. liii. *Spelman*, voc. *Feodum*. 1 *Robertson's Charles V.* 10, 12 and Appendix, note viii. *Esprit des Loix*, liv. 30. 1 *Hallam's Middle Ages*, 80, *et seq.* Mr. Spence's theory is, that the sources of the feudal system are to be found in the relation of *patron* and *client* in the Roman provinces, and in the distinction between *dominium directum* and *dominium utile* in the Roman law. 1 *Spence's Chancery*, 28, *et seq.*

**FEUDATORY.** See *Feodatory*.

**FEUDORUM LIBRI** (or **CONSUETUDINES**.) The books or customs of fiefs. A compilation of feudal law made about A. D. 1150, (or 1170, according to some,) at Milan, in Lombardy. It is the most ancient work on the subject, and was always regarded of the highest authority on the continent. 1 *Robertson's Charles V.* Appendix, Note xxv. 3 *Kent's Com.* 496, note. Mr. Reeves says no allusion is made to it in the old English law books. 2 *Reeves' Hist.* 50. It is quoted however by *Spelman*, and, in more modern times, the most eminent writers, such as Sir William Blackstone, have referred to it freely. It is supposed to have been the work of two Milanese lawyers, (or *senators*, as they are termed by Montesquieu,) whose names are given by *Spelman* as Gerardus Niger, and Obertus de Orto. *Spelman*, voc. *Feodum*. Voet, in his *Digressio de Feudis*, sect. 2, says it is uncertain who were the authors. Dr. Robertson observes that it was formed plainly in imitation of the Roman code, the Pandects having been discovered only a few years previous. It is usually annexed

to the Corpus Juris Civilis, under the title of *Consuetudines Feudorum*. 3 *Kent's Com. ub. sup.* 1 *Mackeld. Civ. Law*, 94, Kaufmann's note.

**FEUDUM.** L. Lat. [from Sax. *feoh*, a stipend.] A fief, fee or feud, as it is sometimes translated. *Feudum est jus in prædio alieno in perpetuum utendi fruendi; quod pro beneficio dominus dat ea lege, ut qui accipit sibi fidem et militiæ munus aliudve servitium exhibeat*; a fief is a right of perpetual enjoyment in another's land, which the owner grants out of favor, upon condition that he who receives it shall render to him fealty, and military and other service. *Spelman*, voc. *Feodum*, citing *Cujacius ad Lib. Feud. tit. 1.* It is properly not the land itself, but a right in land; (*jus in prædio*.) *Id.*

*Feudum antiquum*; an ancient feud or fief; a fief descended to the vassal from his ancestors. 2 *Bl. Com.* 212, 221. A fief which ancestors had possessed for more than four generations. *Spelman*, voc. *Feodum*.

*Feudum apertum*; an open feud or fief; a fief resulting back to the lord, where the blood of the person last seised was utterly extinct and gone. 2 *Bl. Com.* 245.

*Feudum francum*; a free or frank fief or fee. *Spelman*.

*Feudum improprium*; an improper or derivative feud or fief. 2 *Bl. Com.* 58.

*Feudum individuum*; an indivisible or impartible feud or fief; descendible to the eldest son alone. 2 *Bl. Com.* 215.

*Feudum ligium*; a liege feud or fief; a fief held immediately of the sovereign; one for which the vassal owed fealty to his lord against all persons. 1 *Bl. Com.* 367. *Spelman*.

*Feudum maternum*; a maternal fief; a fief descended to the feudatory from his mother. 2 *Bl. Com.* 212.

*Feudum novum*; a new feud, or fief; a fief which began in the person of the feudatory, and did not come to him by succession. *Spelman*. 2 *Bl. Com.* 212. *Feudum novum ut antiquum*; a new fief held as an ancient one, or with all the qualities annexed to a fief descended from ancestors. 2 *Bl. Com.* 212. 1 *Steph. Com.* 384.

*Feudum paternum*; a paternal feud, or fief; a fief descendible only to the heirs by the father's side. 2 *Bl. Com.* 243.

*Feudum proprium*; a proper, genuine and original feud or fief; being of a purely military character and held by military service. 2 *Bl. Com.* 57, 58.

*Feudum talliatum*; a mutilated or truncated fief, or inheritance, from which the

heirs general were cut off. *Craig Jus. Feud.* lib. 1, tit. 10, s. 24, 25. 2 *Bl. Com.* 112, note (m). Hence the English *fee tail*, (q. v.)

*Feudum* is the word generally used in the feudal law of the continent of Europe, to denote a feudal estate, as *feodum* is peculiar to the law of England. It does not, however, seem to have been applied to these estates until they had become hereditary, (when it was substituted in place of *beneficium*), and hence the meaning of an estate of inheritance which has always been attached to it, and the words *feodum* and *fee* in English law. See *Fee*, *Feodum*, *Beneficium*. According to Muratori, it does not occur in any charter previous to the eleventh century. 1 *Murat. Antiq. Med. Ævi*, 594. Dr. Robertson observes that a charter of King Robert of France, A. D. 1008, was the earliest deed in which he had met with it. 1 *Rob. Charles V. Appendix*, Note viii. *Spelman*, (voc. *Feodum*), remarks that it does not occur in the ancient laws of Lombardy.

**FEY.** L. Fr. Faith. *Kelham*.

A deed, (*fait*.) *Id.* *Feyets*; deeds, actions. *Id.*

**FEYN.** L. Fr. A fine. *Punys par prison et par feyn*; punished by imprisonment and by fine. *Britt.* c. 4.

**FEYRE.** L. Fr. A fair. *Britt.* c. 15.

**FEZ.** L. Fr. Fees. *Kelham*.

Actions; things done, (*faits*.) *Id.*

A son, (*fitz*.) *Id.*

Times, (*foitz*.) *Id.*

*Ff*, or *ff*. A character frequently used by old writers, (and by some modern ones, as Blackstone,) in quoting the Digests or Pandects of the civil law. Supposed by the majority of jurists to have originated from the letter *D* (for *Digesta*), by the addition of a stroke of abbreviation. The more probable supposition is, that it was merely a careless mode (as *ff*) of writing the Greek letter *Π*, or *π*, the initial letter of *Παρθέναι*, which was used, especially by the Greeks, in quoting the Digest. *Calvin, Lex. Jur. voc. Digestorum*. 1 *Mackeld. Civ. Law*, § 65. Bracton uses a single F, in his quotations, thus: F. locati, L. si merces, ff. culpæ nomine. *Bract.* fol. 114. Mr. Long supposes this last character to be a double f; but it appears rather to be a double s, used in place of a §. *Long's Discourses*, 107.

**FIAR.** In Scotch law. He that has the fee or *feu*. The proprietor is termed *far*, in contradistinction to the life renter. 1 *Kames' Equity*, Pref.

**FIAT.** L. Lat. (Let it be done.) In English practice. A short order or warrant of a judge, commanding or authorizing something to be *done*; as the entry of a rule or order, the issuing of process, and the like. 1 *Tidd's Pract.* 100, 108. 2 *Id.* 1091.

*Fiat justitia*, (let justice be done,) were words formerly written by the king at the top of a petition for a warrant to bring a writ of error in parliament, signifying his assent. *Jacob. Dyer*, 375. *Staundf. Prærog. Reg.* 22.

*Fiat prout serî comenavit*, (nil temere novandum.) Let it be done as it hath used to be done; nothing must be rashly innovated. *Jenk. Cent.* 116, case 29. *Branch's Pr.*

**FIAT in Bankruptcy.** One of the proceedings in the English bankrupt practice, being a power, signed by the Lord Chancellor, addressed to the court of bankruptcy, authorizing the petitioning creditor to prosecute his complaint before it. 2 *Steph. Com.* 199. By the late statute 12 & 13 Vict. c. 116, fiats were abolished.

**FICTIO.** Lat. [from *figere*, to feign.] A fiction. See *Fiction of law*.

**FICTION OF LAW.** [Lat. *fiction juris*.] A legal assumption that a thing is true, which is either not true, or which is as probably false as true. *Bell's Dict.* *Broom's Max.* 54.—An assumption of a possible thing as a fact, which is not true, for the advancement of justice, and which the law will not allow to be disproved. (*Fictio juris est legis, adversus veritatem, in re possibili, ex justa causa dispositio, adversus quam probare non licet.*) 2 *Rol. R.* 502. *Westenberg Princ. Jur.* lib. 22, tit. 3. n. 28. *Gothofred* in Dig. lib. 22, tit. 3, fol. 322. *Best on Presumptions*, 24, § 20, and note. The matter assumed should always be for the furtherance of justice, (*ex justa causa*.) Hence the maxim, *In actione juris semper subsistit æquitas*. 3 *Bl. Com.* 43, 283. *Co. Litt.* 150 a. *Fictio legis neminem lædit — nemini operator damnum vel injuriam*. A fiction of law injures no man; works loss or injury to no one. 2 *Rol. R.* 502. *Palm.* 354. No fiction shall extend to work an injury. 3 *Bl. Com.* 43. *Woodworth, J.*, 17 *Johns. R.* 348. The matter assumed should also be physically possible,

(*in re possibili*.) 2 *Rol. R. ub. sup.* *Huber. Prælect. J. C.* lib. 22, tit. 3. n. 22.

Mr. *Best* distinguishes legal fictions from presumptions *juris et de jure*, and divides them into three kinds; affirmative or positive fictions, negative fictions, and fictions by relation. *Best on Presumptions*, 27, § 24.

*Affirmative* or positive fictions are those which assume something to exist, which in reality does not; such as the fiction of lease, entry and ouster in the action of ejectment, and the *ac etiam* clause in a writ of *capias*. *Id. ibid.* To these may be added the ancient common recoveries and the modern feigned issues. In *negative* fictions, that which really exists is treated as if it did not. *Id. ibid.*

*Fictions by relation* are of four kinds. First, where the act of one person is taken to be the act of another; as where the act or possession of a servant is deemed the act or possession of the master. Second, where an act done by or to a thing, is taken, by relation, as done by or to another; as where a mortgage of land is created by delivery of the title deeds, or an acceptance of a portion of goods sold is taken as equivalent to a taking possession of the whole. Third, fictions as to place; as where a contract made abroad is treated as if made in London, or other place where it is intended to enforce it. 3 *Bl. Com.* 107. To this head belongs the *postliminium* of the Roman law. *Inst.* 1. 12. 5. See *Postliminium*. Fourth, fictions as to time, such as the principle that the title of an executor or administrator to the goods of the testator, or intestate, relates back to the time of his death; the general principle that every ratification has relation back to the time of the act done; and the practice of allowing various acts in a suit to be done *nunc pro tunc*.\* *Best on Presumptions*, 27, 28. See *Ratihabitio*, *Nunc pro tunc*.

**FIDEI-COMMISSARIUS.** Lat. [from *fidei-commisum*, q. v.] In the civil law. A person who had a beneficial interest in an estate which, for a time, was committed to the faith or trust of another. *Harris' Justin. Inst.* quoted by Cooper, *ub. infra*. *Halifax Anal.* b. 2, c. 8. This word answers very nearly to the *cestuy que trust* of the English law, but Dr. Cooper prefers anglicizing it *fidei-commissary*, which is also the form adopted by Dr. Brown. *Cooper's Justin. Notes* \*536. 1 *Brown's Civ. Law*, 190, note. Mr. Justice Story prefers *fide-commissary*. 1 *Story's Eq. Jur.* § 321, note.

**FIDEI-COMMISSUM.** Lat. (pl. *fidei commissa*.) In the civil law. A thing committed to one's faith. A trust, or bequest in trust; the disposal by will of an inheritance to a person, in confidence that he would convey it, or dispose of the profits, at the will of another, or, in the words of the Institutes, that he would restore (*reddat, restituat*) it to another. *Inst.* 2. 23. 2. *Hulifax Anal.* b. 2, c. 8. 2 *Bl. Com.* 327. 1 *Steph. Com.* 329. The person in whom the trust was reposed was called *hæres*, or *hæres fiduciarius*, the person intended to be benefited, *fidei-commissarius*. *Inst.* 2. 23. The trust itself was called *fidei-commissum*, because the performance of it anciently depended entirely upon the *faith* or honor of the trustee. *Ideo fidei-commissa appellata sunt, quia nullo vinculo juris, sed tantum pudore eorum qui rogabantur, continebantur*;—a *fide hæredum pendebant*. *Inst.* 2. 23. 1, 12. Heineccius calls the testator *fidei-committens*. *Elem. Jur. Civ.* lib. 2, tit. 23.

The right of the *fidei-commissarius* was originally considered as *jus precarium*, one for which the remedy was only by entreaty or request, but was afterwards made *jus fiduciarium*, a confidence, the observance of which might be enforced; and it was made the business of a particular magistrate (the *prætor fidei-commissarius*), to enforce the observance of them. *Inst.* 2. 23. 1. 1 *Steph. Com.* 329. 4 *Kent's Com.* 289. The terms, however, by which the *fidei-commissum* was created, continued to preserve their ancient character of a request:—*peto*, (I request;) *rogo*, (I ask;) *volo*, (I wish;) *mando, fidei tuæ committo*, (I commit to your faith.) *Inst.* 2. 24. 3. The Institutes give the form of words which might be employed for this purpose. *Lucius Titius hæres meus esto*; let Lucius Titius be my heir. This was the appointment of the heir, or trustee. Then followed the trust: *Rogo te, Luci Titi, ut cum primum poteris hereditatem meam adire, eam Caio Seio reddas, restituas*: I request you, Lucius Titius, that as soon as you shall enter on my inheritance, you restore it to Caius Seius. *Inst.* 2. 23. 2. 4 *Kent's Com.* 289, 290. See 1 *Spence's Chancery*, 435—438.

**FIDE-JUBERE.** L. Lat. In the civil law. To order a thing upon one's faith; to pledge one's self; to become surety for another. *Fide-jubes? Fide-jubeo*; Do you pledge yourself? I do pledge myself. *Inst.* 3. 18. 1. One of the forms of stipulation. The form in Greek was, τῇ ἐμῇ πίστει καὶ εὐνοίᾳ. *Inst.* 3. 21. 7.

**FIDE-JUSSIO.** Lat. In the civil law. A contract in which a person bound himself, as a surety or accessory, for another, by the way of stipulation, without discharging the obligation of the principal. *Halifax Anal.* b. 2, c. 18, num. 10. Called *fide-jussion*. *Id. ibid.*

**FIDE-JUSSOR.** Lat. [from *fide-jubere*, q. v.] In the civil law. A surety for another; a guarantor; one who binds himself for another who makes a promise, (*pro eo qui promittit obligatus*.) *Inst.* 3. 21. pr. One who binds himself in the same contract conjointly with the debtor, for the greater security of the creditor. *Cooper's notes in loc.*

A bondsman or bail for a party in an action. Fide-jussors were sureties in the nature of special bail, whose undertaking was *judicatum solvi*, that the amount adjudged to the plaintiff should be paid to him. *Inst.* 4. 11. pr. 3 *Bl. Com.* 291. This however was only where a defendant appeared by attorney; for if he defended in his own person, the only security he was compelled to give was that he would remain in *judicio* (in court, or within the power of the court,) until the end of the suit. *Inst.* 4. 11. 2.

The sureties taken on the arrest of a defendant, in the court of admiralty, were formerly denominated fide-jussors. 3 *Bl. Com.* 108.

**FIDELIS.** Lat. [pl. *fideles*; from *fides*, faith; L. Fr. *feal*, *foiall*.] In old European law. Faithful; trusty. *Fideles in Christo*; the faithful in Christ, or Christians. *Spelman*, voc. *Fideles*. Old instruments frequently commence with the words, *Omnibus in Christo fidelibus*; to all the faithful in Christ. *Fideles regis*; the subjects of a king or prince. Hence writs, commissions, &c., were formerly addressed by the sovereign in England, *dilecto et fideli suo, dilectis et fidelibus suis*; to his beloved and faithful. *Reg. Orig. passim*.

A feudal tenant, or vassal, as bound to be faithful, or to bear faith (*fidem ferre*,) to his lord. *Spelman*. Applied originally to the *comites*, the attached or devoted followers of the chiefs among the ancient Germans. 1 *Robertson's Charles V.*, Appendix, Note viii.

**FIDELITAS.** L. Lat. [from *fidelis*, q. v.] In old English law. Fealty; fidelity. *Spelman*, voc. *Fidelis*. 1 *Bl. Com.* 367. See *Fealty*. Used in the plural, *fidelitates*. *Reg. Orig.* 317 b.

**FIDES.** Lat. [Fr. *foi*, *foy*.] Faith;

fidelity; allegiance. *Fidem ferre, portare*; to bear faith. Words in the old oaths of fealty. *Spelman. Ad fidem utriusque regis*; owing allegiance to each king. *Bract. fol. 427 b.*

Trust; confidence; honesty, sincerity or uprightness of dealing. *Bona fides*; good faith. See *Bona fides. Uberrima fides*; the most abundant faith; the utmost degree of good faith. 2 *Kent's Com.* 483, note. *Fides servanda est.* Faith must be observed. *Id.* 485. An agent must not violate the confidence reposed in him. *Story on Agency*, § 192.

Faith; honor; pledged or plighted word or troth. *Fides data*; faith given; troth plighted. *Legum servanda fides*; the faith of laws must be observed. *Cowell, voc. Devisé.*

*Fides servanda est; simpliciter juris gentium prævalent.* Faith must be kept; the simplicity of the law of nations must prevail. A rule applied to bills of exchange as a sort of sacred instruments. Lord Mansfield, 3 *Burr.* 1672. *Story on Bills*, § 15.

FIDUCIARY. [from Lat. *fiducia*, confidence.] Relating to, founded upon, or having the quality of a trust or confidence.

Founded upon a special or technical trust, as distinguished from an implied trust.\* McLean, J., 2 *Howard's R.* 202, 208.

FIE. L. Fr. Fee; a fee. *Kelham.* An old form of *fee*.

Faith. *Id.* Another form of *foy*.

FIEF. Fr. [from Sax. *feoh*; L. Lat. *feudum*.] In feudal law. An estate in land held of a superior by service. The same with the English *fee*, and Scotch *feu*. See *Feudum, Fee*.—An estate in land, held under the charge of fealty, homage, and military service. *Pothier Traite des Fiefs*, part 1, c. prelim. sec. 1, 3. See *Esprit des Lois*, lib. 30, c. 16, 17, *et passim*. *Fief* rarely occurs in old English law, though it is found in the *Mirror*, together with the derivative *fieftenant*, (q. v.) *Mirr.* c. 1, § 16, 17.

*Fieu* and *fiew*, (qq. v.) occur in the books as old forms of this word; and it is perhaps not assuming too much to suppose that the final *f* in *fief* was originally an *u*; the convertibility of *u* into *f*, being apparent in other instances. See *Farley, Lieutenant*. This supposition is aided by the fact that the French term for an allodial estate is a word also ending in *eu*; *aleu*. See *Alleu*. It shows, moreover at once, the derivation from the primitive Saxon *feoh*: *fieu* being the same sound in other

letters. The great antiquity and expressiveness of this French term have led to its introduction into modern English law, and it is accordingly freely used by the best English writers to denote a feudal grant or estate. 2 *Bl. Com.* 45. 1 *Steph. Com.* 218. 3 *Kent's Com.* 494, 496.

FIEF D'HAUBERT. Fr. [L. Lat. *feudum hauberticum*.] In Norman feudal law. A fief or fee held by the tenure of knight-service; a knight's fee. 2 *Bl. Com.* 62. *Mirr.* c. 2, § 27. *Spelman, voc. Feodum*.

FIEF-TENANT. L. Fr. In old English law. The holder of a fief or fee; a fee-holder or freeholder. *Touts les fief tenants dans le hundred sont obliges de vner, per le servage de lour fiefs*; all the free-holders in the hundred are bound to come, by the service of their fees. *Mirr.* c. 1, § 16.

FIERDING COURTS. Ancient Gothic courts of an inferior jurisdiction, so called because four were instituted within every inferior district or hundred. 3 *Bl. Com.* 34. *Stiernhook de Jur. Goth.* lib. 1, c. 2, cited *ibid*.

FIERI. Lat. To be made; to be done. See *In fieri*.

*Fieri non debet, [debet,] sed factum valet.* It ought not to be done, but [if] done, it is valid. *Shep. Touch.* 6. 5 *Co.* 39. *T. Raym.* 58. 1 *Stra.* 526. A maxim frequently applied in practice. *Platt, J.*, 19 *Johns. R.* 84, 92.

FIERI FACIAS. L. Lat. (You cause to be made.) In practice. A writ of execution, (usually termed for brevity, *fi. fa.*;) commanding the officer to whom it is directed that he *cause to be made* of the party's goods and chattels or real estate, (that is, to obtain by a levy and sale of them,) the amount specified in the writ, and that he have it in court on the return day. 3 *Bl. Com.* 417. 3 *Steph. Com.* 649. 2 *Tidd's Pract.* 993, 998.

The name of this important writ is derived from its two emphatic words, as distinguished in the form given *infra*. *Co. Litt.* 290 b. 3 *Bl. Com.* 417. It is supposed by Mr. Reeves to have obtained both its name and existence from the words of the statute of Westminster 2, chap. 18; *quod vicecomes fieri faciat de terris et catalis*. 2 *Reeves' Hist. E. Law*, 187. The general opinion however has been that it was a common law execution. *Id. ibid*.

note. 2 *Tidd's Pr.* 998. In modern English practice, the *fi. fa.* issues against goods and chattels only, and it seems to be supposed in the books that the ancient writ was restricted in the same way. But the forms in the Register are all *de terris et catalis*, thus: *Rex vic. salutem: Præcipimus tibi quod de terris et catalis T. de S. in balliva tua, FIERI FACIAS decem libras, et illas habeas coram justitiariis nostris apud W., in octavis Sancti Hilarii, ad reddendum T. de B., quæ ei in eadem curia nostra adjudicatæ fuerunt, pro damnis ipsius quæ habuit occasione cujusdam transgressionis, &c. Et habeas ibi tunc hoc breve. Teste, &c. Reg. Jud. 18 b.* See *Bract.* fol. 312 b. In American practice, the *fi. fa.* is usually directed to be executed in the first instance against the goods and chattels of the party named, and, failing those, against his real estate.

**FIERI FECI.** L. Lat. (I have caused to be made.) In practice. The name given to the return made by a sheriff or other officer to a writ of *feri facias*, where he has collected the whole, or a part of the sum directed to be levied. 2 *Tidd's Pr.* 1018. The return, as actually made, is expressed by the word "satisfied" endorsed on the writ.

**FIEU.** L. Fr. A fee, or fief. *Fieu de chevalier*; a knight's fee. *Kelham.*

**FI EW.** L. Fr. A fee or fief. *Fiew tenants*; fee tenants, or free tenants. *Kelham.* The same with *fief-tenants*, (q. v.)

**FIFTEENTHS.** [L. Lat. *decima quinta*; Fr. *quinzième*.] In English law. A species of tax upon personal property, formerly imposed upon cities, townships and boroughs in England, that is, not upon the citizens individually, but upon the whole city, town, &c.; and so called, because amounting to a *fifteenth* part of what each city or town was valued at, or a *fifteenth* of every man's personal property, according to a reasonable valuation. 2 *Inst.* 77. 1 *Bl. Com.* 308, 309. *Camd. Brit.* 168, 171. *Cowell. Tomlins.*

**FIGHTWITE.** Sax. In old English law. A mulct or fine imposed on a person for making a fight or quarrel, (*mulcta ob commissam pugnam*), to the disturbance of the peace. *Spelman. Cowell.*

**FIL, File.** L. Fr. A thread; a line. *Jesques au fil de myleu del ewe*; as far as the line of the water. *Britt.* c. 42, fol. 111 b.

*Jesques au fil de myleu del ewe*; as far as the middle line or thread of the water. *Id. ibid.* fol. 110.

**FILACE.** L. Fr. A file. *En filace*; on file. *Kelham.* *Philas* occurs in Britton. *Remue de philas*; removed from the file. *Britt.* c. 48.

**FILACER, Filazer, Filizer.** [L. Lat. *filizarius. filazarius*; from Fr. *file, filace*, (Lat. *filum*,) a thread.] An officer of the court of common pleas in England, so called, because he *filed* the writs whereon he made out process. *Cowell.* There were fourteen of these officers, whose duty was to make out all original writs, and process thereon, to enter the appearance of defendants, special bails, imparlances, &c. *Termes de la ley.* 1 *Arch. Pr.* 11, *et passim.* This office was abolished by statutes 7 Will. IV., and 1 Vict. c. 30. *Holthouse.*

**FILACIUM.** L. Lat. [from Fr. *filace*.] A file. *Spelman.* See *File.*

**FILARE.** L. Lat. In old English practice. To file. *Towns. Pl.* 67.

**FILCTALE.** In old English law. A word used by Bracton to denote a kind of comotation or entertainment, given by bailiffs of hundreds, for the purpose of extorting money from those who attended them; (*ut pecunias extorqueant ab eis qui sequuntur hundreda sua et ballivas suas.*) *Bract.* fol. 117 b. *Spelman* considers the proper reading of this word to be *fildale*, an *ale*, or drinking in a *field*.

**FILE.** L. Fr. [from *filia*.] A daughter. *Litt.* sect. 7, 8.

*Fielle, fillie* and *file* are given by *Kelham* as other forms of this word.

**FILE.** [L. Lat. *filum, filacium*.] In practice. A thread, string or wire, upon which writs and other exhibits in courts and offices, were formerly fastened, or *filed* for the more safe keeping of them together. *Cowell. Spelman, voc. Filacium.*

The paper itself, or a number of papers so filed. *Tomlins.* A *file* is a record of the court. 1 *Lill.* 112.

The papers filed appear to have been originally *pierced* through with (*trajecta*), and *strung upon* the thread or wire employed, as is still sometimes done in offices. *Spelman.* They are now usually arranged in bundles, a thread or string being used on the *outside* to fasten them together. In modern practice, a *file* is a bundle of papers,



each paper being similarly folded and endorsed, and tied together. The phraseology of the old practice however is still retained in the common expressions "to put on file," "to take off the files." See *To file, Filum*.

**FILE.** L. Fr. [L. Lat. *filum*.] A thread, line or mark. *Haut file de mer*; the high line of the sea; high water mark. *Rot. Parl.* 11 Hen. IV. m. 61. See *Fil, Filum aquæ*.

To **FILE.** [L. Lat. *filare*.] In practice. To put upon the files, or deposit among the records of a court. *Afile* (q. v.) is used in the old books. See *Fil*. *Filing a bill* in equity is an equivalent expression to *commencing a suit*. 7 Metcalf's R. 157.

The *filing* of a paper is considered as an exhibition of it to the court, and the clerk's office in which it is filed represents the court for that purpose. The *filing* of papers forms an important part of the proceedings in an action, and is of constant occurrence in practice. It is effected by delivering the paper, (endorsed with the title of the cause and the attorney's name,) to the clerk of the court in which the action is pending, who marks it "*filed*," adding the date, and deposits it under the proper head, among the papers or files in his office.

**FILIATION.** [L. Lat. *filiatio*, from *filius*, a child.] The fact which creates the relation of parent and child. *Hubback's Evid. of Success.* 235.

The adjudging of a bastard to be the child of a certain man.\* The fixing of a bastard child on some one as its father. *Webster*. See *Affiliation*.

**FILICETUM.** Lat. [from *filix*, fern.] In old English law. A ferny or brackly ground; a place where fern grows. *Co. Litt.* 4 b. *Shep. Touch.* 95.

**FILIUS.** Lat. A son; a child. *Præsumitur quis esse filius, eo quod nascitur ex uxore*; one is presumed to be another's child, because he is born of his wife. *Bract.* fol. 6, 88. *Filius est nomen naturæ, sed hæres nomen juris*. *Son* is a name of nature, but *heir* is a name [term] of law. 1 *Sid.* 193. 1 *Powell on Devises*, 311. An alien may have a son, but no alien can have an heir. *Id. ibid.* See *Hæres*.

A distinction was sometimes made in the civil law, between *fili* and *liberi*; the latter word including grandchildren, (*nepotes*),

the former not. *Inst.* 1. 14. 5. But see *Dig.* 50. 16. 201.

**FILIUS-FAMILIAS.** Lat. In the civil law. The son of a family; an unemancipated son. *Inst.* 2. 12. pr. *Id.* 4. 5. 2. *Story's Conflict of Laws*, § 61.

**FILIUS MULIERATUS.** L. Lat. In old English law. The eldest legitimate son of a woman, who previously had an illegitimate son by his father. *Glanv. lib.* 7, c. 1. Otherwise called *mulier*. 2 *Bl. Com.* 248. See *Mulier*.

**FILIUS NULLIUS.** Lat. The son or child of nobody. *Filius populi*; a child of the people. Terms applied to a bastard. 1 *Bl. Com.* 459. 6 *Co.* 65 a. *Fortescue de L. L. Angliæ*, c. 40.

**FILS.** Fr. Sons. Defined by the Civil Code of Louisiana to include daughters. *Le mot fils comprend les filles*. Art. 3522, num. 1.

**FILUM.** Lat. [L. Fr. *fil, file*, qq. v.] In old practice. A thread, string or wire used for *passing through* and connecting papers together; a file. Otherwise called *filacium*, (Fr. *filace*, qq. v.) *Spelman*, voc. *Filacium*. See *File*.

A thread or line, *passing through* a stream or road. See *Filum aquæ*, *Filum viæ*. The English word *thread* has in ordinary speech this sense of *running through*; as in the expressions "*thread* of a discourse or argument"; "*to thread* one's way," &c.

A line or mark, as the edge or border of a thing. *Filum forestæ*; the edge of the forest. *Manwood*, 371. 1 *Crabb's Real Prop.* 485.

**FILUM AQUÆ.** L. Lat. [L. Fr. *fil del ewe*.] A thread or line of water; a water line or mark; the outer line or edge of a stream; the water's edge. *Altum filum*; the high line. *Rot. Pat.* 4 Hen. VI. m. 11, par. 2. *Haut file de mer*; the high line of the sea, high water mark. *Rot. Parl.* 11 Hen. IV. m. 61. *Blount*.

A stream, or course of water. *Cowell. Blount*.

A thread of water, as *running through* a stream; a middle thread; a central line.\* 24 *Pick. R.* 344.—An imaginary line drawn through the middle of a stream, and supposed to divide it into two equal parts; constituting, in certain cases, the boundary between the riparian proprietors on each side, and between counties, townships, &c.\* *Schultes on Aquatic Rights*, 88. *Blount*.

*Item si tantum ex altera parte prædia possideat, prope ripam, tenementum suum erit usque ad filum aquæ;* also if he own the lands only upon one side [of the stream,] near [on] the bank, it will be his freehold as far as the thread of the water. *Bract.* fol. 208 b. *Item refert utrum aqua, in qua id factum est quod nocet, propria sit ejus de quo queritur, vel communis, vel in parte propria, scilicet usque ad filum aquæ, et partim aliena.* It is also a material consideration, whether the water in which the nuisance is made, be the property of the party complained of, or common, or in part his own, that is, as far as the thread of the stream, and partly another's. *Id.* fol. 235.

The phrase *filum aquæ* is constantly used in modern law, indifferently with *medium filum aquæ* (as part of the phrases, *usque filum aquæ, ad filum aquæ, ad medium filum aquæ,*) to signify the same thing. 17 *Johns. R.* 195. 20 *Id.* 90, 99. 6 *Cowen's R.* 518. *Id.* 543—550. 5 *Wendell's R.* 423. 13 *Id.* 355. 20 *Id.* 149. 24 *Id.* 451. 26 *Id.* 404. 4 *Hill's (N. Y.) R.* 369. 2 *N. Hamp. R.* 369. 3 *Greenleaf's R.* 474. 3 *Kent's Com.* 428—431, and notes. 2 *Smith's Lead. Cas.* 98, (Am. ed. note.) But that *filum*, in itself, properly imports an *outer* line, an edge, verge or border, and not a central line, is clear from repeated instances of its use in the old books. Thus, it is expressly applied to the sea, in the phrase *altum filum*, (L. Fr. *haut file de mer*), to denote high water mark. See the first definition, *supra*. In the same sense it is applied to a forest. Thus, "if a dog fastens upon a deer before she gains *filum forestæ* (the edge or verge of the forest,) and she drags the dog *into the forest*, and is there killed, the owner may pursue and take the deer out of the forest." *Manwood's Forest Law*, 371. See *Filum*. Bracton, indeed, (who is followed by Lord Hale) uses *filum* to denote a *central* line, and it is probably through this author that this sense of the word has become so firmly established in modern law. See the quotations *supra*. In Britton both phrases, *fil del ewe*, and *fil de myleu del ewe* are used in the chapter *De Disseisine*, but are not apparently distinguished. *Britt.* c. 42. Strictly, the central line of a stream should be designated as *medium filum aquæ*, or, in English, the "*middle thread*;" which is the phrase employed by Lord Mansfield and other high authorities. 4 *Burr.* 2162. 3 *Sumner's R.* 170.

**FILUM VLÆ.** L. Lat. The thread or middle line of a road. An imaginary line

drawn through the middle of a road, and constituting the boundary between the owners of the land on each side. 2 *Smith's Lead. Cas.* 98, (Am. ed. note.)

**FINAL.** [L. Lat. *finalis*, from *finis*, an end.] That which terminates or ends a matter or proceeding, not absolutely, however; as the final judgment of an inferior court, which admits of an appeal.

That which absolutely ends or concludes a matter; as the final judgment of a court, which admits of no appeal. See *Final sentence*.

**FINAL DECREE.** In equity practice. A decree which finally decides and disposes of the whole merits of a cause; reserving no further questions or directions for the future judgment of the court, so that it will not be necessary to bring the cause again before the court for its further decision.\* 7 *Paige's R.* 18. 2 *Daniell's Chanc. Pr.* (Perkins' ed.) 1199, note (1.)

**FINAL JUDGMENT.** In practice. A judgment which puts an *end* to an action at law, by declaring that the plaintiff either has, or has not entitled himself to recover the remedy he sues for. 3 *Bl. Com.* 398. So distinguished from *interlocutory* judgments, which merely establish the right of the plaintiff to recover, in general terms. *Id.* 397.

A judgment which cannot be appealed from; which is perfectly conclusive upon the matter adjudicated. Morton, J., 24 *Pick. R.* 300.

**FINAL PROCESS.** In practice. Writs of execution in an action at law. So termed as concluding the proceedings, in contradistinction to *mesne process*, (q. v.)

**FINAL SENTENCE.** Distinguished from a definitive sentence. Marshall, C. J., 1 *Cranch's R.* 103. The last decree of an inferior court is *final* in relation to the power of that court, but not in relation to the property itself, [which is the subject of litigation,] unless it be acquiesced under. *Id. ibid.*

**FINALIS.** Lat. [from *finis*, an end or limit.] In old English law. That which makes an *end* or termination; final. *Finalis concordia*, (q. v.); a final concord or agreement.

That which constitutes a limit or boundary, as of land. *Arbor finalis*; a boundary tree. See *Arbor, Finis*.

**FINALIS CONCORDIA.** L. Lat. In old conveyancing. A final concord; a fine of lands. *Talis concordia finalis dicitur, eo quod finem imponit negotio, adeo ut neutra pars litigantium ab eo de cætero poterit recedere.* Such a concord is called final because it puts an end to the matter, so that neither of the litigating parties can afterwards recede from it. *Glanv.* lib. 9, c. 3. *Dicitur finalis concordia, et ideo finalis quia imponit finem litibus.* It is called a final concord because it puts an end to suits. *Bract.* fol. 435 b. These passages are descriptive of a fine when it was in the form of an actual suit.

**FINDING.** In practice. The result of a judicial examination or inquiry; the statement to a court of such result.

This term is most commonly applied to the making up and delivery, by a jury, of their verdict. See *Verdict*. But Lord Coke applies it to the judgment of the court itself. "There is one *finding* by the jury and another by the judges, and when the defendant confesses it, &c., the judges find sufficient matter before them to give judgment." 11 Co. 30, *Powtler's case*.

**FINE.** [L. Fr. *fyn, feyn*; from Lat. *finis*, an end.] In English law. A sum of money or price (*pretium*) paid for obtaining a benefit, favor or privilege; as the ancient fines for obtaining a writ, and for alienation; and the modern fines for admission to a copyhold, for obtaining or renewing a lease.\* 8 Co. 59 b, *Beecher's case*. See *Fine for alienation*.

A sum of money paid by an offender in satisfaction of his offence, and as a punishment (*pæna*) for it.\* 8 Co. 59 b. See *Fine or Mulct*.

A species of conveyance or assurance, the effect of which was to make men enjoy their lands and inheritances in peace, (*pax*.)\* 8 Co. ub. sup. See *Fine of lands*. All these, in the words of Lord Coke, "are called *fines* because they are the end, or causes of the end of all the said businesses." 8 Co. ub. sup.

**FINE FOR ALIENATION.** In feudal law. A sum of money paid to the lord by a tenant, whenever he had occasion to aliene, or make over his land to another; a sum paid for license to alien the land. One of the incidents of tenure by knight-service. 2 Bl. Com. 71, 72. 1 Steph. Com. 165, 180.

Fines were expressly reserved to copyhold tenures, when tenure by knight-service was abolished by the statute 12 Car. II.

Hence they are, in general, still payable in England, to the lord, on the alienation of copyhold estates. 1 Steph. Com. 208. 2 Id. 47, 48. 1 Crabb's Real Prop. 615—628.

**FINE (or MULCT.)** In criminal law and general practice. A payment of money imposed upon a party as a punishment for an offence. A pecuniary punishment imposed by some court of record, and usually under the authority of some statute. See *Amercement*.

According to Spelman, the word *fine* was not used in this sense, in England, before the Norman invasion. It was applied originally to the heavier kind of payment, imposed for grave offences, (*multa gravior, gravioribus delictis imposita*.) answering to the Saxon *wita major*, and so distinguished from an *amercement*. Spelman, voc. *Finis*. See *Amercement*. It was applied also to a pecuniary mulct inflicted by the courts on a stranger, in contradistinction to an *amercement*, which was imposed upon their own officers and ministers. 8 Co. 40 b, *Griesley's case*. 4 Bl. Com. 380. 4 Steph. Com. 442.

The radical idea of the word corresponds closely with its obvious derivation from the Lat. *finis*:—a sum paid to end a matter; as to atone for an offence; to be delivered from a punishment. Thus, in old practice, where a party had been punished by imprisonment, he was frequently allowed to be discharged on payment of a *fine*; his punishment being by such payment ended. Reg. Orig. 222 b, 232. Reg. Jud. 25. So, in modern practice, where a party is fined and ordered to stand committed until the fine is paid, the payment has the same effect of putting an end to the imprisonment. And in any case where a fine constitutes the sole punishment of a party, its payment puts an end to the offence for which it was imposed, or to the legal liability growing out of such offence.

**To FINE.** To impose a pecuniary punishment; to order, adjudge or sentence that an offender pay a certain sum of money as a punishment for his offence. The Lat. *finire* anciently signified to pay a fine. See *Finire*.

**FINE OF LANDS.** [L. Fr. *fyn, feyn*; L. Lat. *finis, finalis concordia*.] In conveyancing. A species of conveyance or assurance by matter of record, formerly in extensive use in England, in the form of a fictitious suit, commenced by the party to

whom the land was intended to be conveyed, against the party intending to convey, and *compromised* or terminated by the *acknowledgment* of the latter that such land was the right of the former.—An amicable composition of a fictitious suit, by leave of the court, in the shape of an agreement or concord, (*concordia*,) enrolled of record, by which the defendant, or deforciant (as he was usually called,) acknowledged the land for which the suit was supposed to be brought, to be the right of the complainant.\* *Glanv.* lib. 8, c. 3. *Shep. Touch.* 2. 2 *Bl. Com.* 349. *Watkins on Conveyancing*, 252. *Burton's Real Prop.* 20, pl. 67. 2 *Wooddes. Lect.* 186. 1 *Steph. Com.* 515. Called also, anciently, a *final concord*, because it put an end to the matter or suit, so that neither of the parties could afterwards recede from it. See *Finalis concordia*.

The *acknowledgment*, *conusance*, or recognition of right made in this pretended suit, was of the substance and essence of the fine, being, in fact, itself the conveyance of the land; the other proceedings being merely auxiliary. Hence the party intending to convey, (or nominal defendant,) was called the *conusor*, or *cognizor*, that is the *acknowledging* party; and the party to whom the conveyance was made, the *conusee* or *cognizee*. *Shep. Touch.* (by Preston,) 3—5. 1 *Steph. Com.* 517. 2 *Bl. Com.* 350, 351. Hence, also, a fine was said to be an *acknowledgment* of a feoffment on record. *Id.* 348. It was, in fact, a solemn conveyance on record, from the cognizor to the cognizee. *Id.* 355. Fines were recently abolished in England by statute 3 & 4 Will. IV. c. 74, and have been either expressly abolished, or become entirely obsolete, in most of the United States. 1 *Steph. Com.* 514, 515. 4 *Kent's Com.* 497. They do not appear to have ever been adopted in New England. Story, J., 4 *Mason's R.* 55.

The peculiar efficacy of a *fine* consisted in its being not only a solemn transaction in a *court of record*, but a transaction in the shape of the acknowledgment of the right of a *litigating party*, and having the same effect with an actual adjudication of the court upon the title of the lands conveyed by it. It was, indeed, in its origin (like a common recovery,) an *actual suit* commenced at law for the recovery of the possession of the land, but being found competent to confer a title in cases where the ordinary conveyances would not suffice, it was at length adopted as a mere means of transfer between persons not really stand-

ing in the relation of adverse litigants. 1 *Steph. Com.* 515. That is to say, the form of a suit was preserved for the purpose of basing upon it, or extracting from it, the *pretended compromise* or confession of title, but *real conveyance*, which it was intended to give. For this purpose, after a conveyance of lands had been agreed upon, the party to whom they were to be conveyed commenced, in form, an action or suit at law against the other; generally, an action of covenant, in the court of common pleas, by suing out a writ of covenant, denominated (from its initial words, where the proceedings were in Latin,) a writ of *precipe quod teneat conventionem*, the foundation of which was a supposed agreement or covenant that the one should convey the lands to the other; on the breach of which agreement the action was brought. The suit being thus commenced, there followed in the next place, the *licentia concordandi*, or leave to agree, (that is, to compromise or settle the suit,) supposed to be applied for by the defendant or deforciant, and granted by the court on payment of a sum of money, called the king's silver or post fine. Next came the *concord*, or agreement itself, being an acknowledgment, or conusance by the deforciant, that the lands in question were the right of the complainant. This concord was the foundation or substance of the fine; being, in form and in fact, the grant or conveyance intended to be given, and was *acknowledged* either openly in court, or before one of the judges, or before two or more commissioners empowered by a special authority. With this acknowledgment, all the *essential* parts of the fine were completed. There remained, however, two more proceedings to complete it *in form*; of which the next was the *note of the fine*, which was only an abstract of the writ of covenant, and the concord, naming the parties, the parcels of land, and the agreement. This was to be enrolled of record in the proper office, by direction of the statute 5 Hen. IV. c. 14. The last of the proceedings was the *foot of the fine*, or conclusion of it, which included the whole matter, reciting the parties, day, year and place, and before whom it was acknowledged or levied. Of this there were indentures made, or engrossed at the chirographer's office, and delivered to the cognizor and the cognizee, usually beginning thus: *Hæc est finalis concordia*, (This is the final agreement,) and then reciting the whole proceeding at length. And thus the fine was completely levied at common law. To render it, however, more universally public, it was directed by statute 4 Hen.

VII. c. 24, that a fine, after engrossing should be openly and solemnly read and proclaimed in court, sixteen times, viz., four times in the term in which it was made, and four times in each of the three succeeding terms, which was reduced to once in each term by stat. 31 Eliz. c. 2, and these proclamations were endorsed on the back of the record. 2 *Bl. Com.* 350—352. 1 *Steph. Com.* 516—518. *Shep. Touch.* 3, 5, *et seq.* 5 *Co.* 39.

**FINE SUR COGNIZANCE DE DROIT, COME CEO QUE IL AD DE SON DONE.** L. Fr. A fine upon acknowledgment of the right, as that which he hath of his gift; that is, upon acknowledgment of the right of the cognizee, as that which he hath of the gift of the cognizor. The best and surest, and most usual kind of fine, by which the deforciant acknowledged a former feoffment, or gift in possession to have been made by him to the plaintiff; hence called a feoffment of record. 2 *Bl. Com.* 352. 1 *Steph. Com.* 518. See *Fine of lands*.

**FINE SUR COGNIZANCE DE DROIT TANTUM.** L. Fr. & Lat. A fine upon acknowledgment of the right merely, and not with the circumstance of a *preceding gift* from the cognizor. This was commonly used to pass a *reversionary* interest which was in the cognizor, of which there could be no feoffment supposed. 2 *Bl. Com.* 353. 1 *Steph. Com.* 519. See *last title*.

**FINE SUR CONCESSIT.** L. Fr. & Lat. A fine upon *concessit*, (he hath granted.) A species of fine, where the cognizor, in order to make an end of disputes, though he acknowledged no precedent right, yet *granted* to the cognizee an estate *de novo*, usually for life or years, by way of supposed composition. 2 *Bl. Com.* 353. 1 *Steph. Com.* 519.

**FINE SUR DON, GRANT ET RENDER.** L. Fr. A fine upon gift, grant and render. A double kind of fine, comprehending the *fine sur cognizance de droit come ceo, &c.*, and the *fine sur concessit*; and which might be used to create particular limitations of estate. 2 *Bl. Com.* 353. 1 *Steph. Com.* 519.

**FINE & RECOVERY ACT.** The English statutes 3 & 4 Will. IV. c. 74; for abolishing fines and recoveries. 1 *Steph. Com.* 514, *et seq.*

**FINE FORCE.** L. Fr. [*fine*, from Fr. *fin*, crafty or subtle; or artificial or exact.]

In old English law. An absolute necessity or constraint, not avoidable. When a man was constrained to do that which he could in no way avoid, he was said to do it *de fine force*. *Cowell. Old N. Brev.* fol. 78. *Stat. 35 Hen. VIII. c. 12.* So a *fine force*, (q. v.) The word *fine* seems to be used in this phrase, in the same sense as the modern word *pure*.

**FINEM FACERE.** L. Lat. In old English practice. To make an end, or settlement; to make or pay a fine. *Finem fecit nobiscum*; he made a fine with us. *Reg. Orig.* 232. *Bract.* fol. 154. To levy a fine. *Bract.* fol. 106.

**FINES LE ROY.** L. Fr. In old English law. The king's fines. Fines formerly payable to the king for any contempt or offence, as where one committed any trespass, or falsely denied his own deed, or did any thing in contempt of law. *Termes de la ley*.

**FINIRE.** L. Lat. [from *finis*, a fine.] In old English law. To fine, or pay a fine. *Hoveden*, 783, cited in *Cowell*. To end or finish a matter.

**FINIS.** Lat. In old English law and practice. An end or termination. *Finis unius diei est principium alterius*; the end of one day is the beginning of the next. 2 *Bulst.* 305. *Finis rei attendendus est*. The end of a thing is to be attended to. 3 *Inst.* 51. The means by which a crime is accomplished is a subordinate consideration. *Id. ibid.*

A fine, or payment of money, as an end, satisfaction or settlement of a claim, offence, or other matter. *Reg. Orig.* 222 b, 232, 179. *Reg. Jud.* 25 a. See *Fine*.

A fine or conveyance of land, as the end or settlement of a pretended suit; or as the end of all controversy respecting the title, (*quia finem imponit litibus*.) See *Fine of lands*.

A terminus, limit, or boundary of land. *Bundæ et metæ et rationabiles divisæ, quæ ponuntur in terminis et finibus agrorum.* *Bract.* fol. 166, 167. See *Divisa*.

**FINITIO.** L. Lat. [from *finis*, an end.] In old records. An ending or finishing; death, as the end of life; (*quia vita finitur morte*.) *Cowell. Holthouse*.

**FINIUM REGUNDORUM ACTIO.** In the civil law. Action for regulating boundaries. The name of an action which lay between those who had lands bordering

on each other, (*qui confines agros habent*;) to settle disputed boundaries. *Inst.* 4. 6. 20. *Id.* 4. 17. 6. *Cooper's notes in loc.* 1 *Mackeld. Civ. Law*, 286, § 271.

**FIRDFARE**, *Ferdfare*, *Herdfare*. Sax. [from *fird*, an expedition or military service, and *fare*, a going.] In old English law. A summoning forth to a military expedition, (*indictio ad protectionem militarem*.) *Spelman*.

An acquittance from going to war. *Fleta*, lib. 1, c. 47. *Cowell*, voc. *Ferdfare*.

**FIRDSOCNE**. Sax. [from *fird*, military service, and *socne*, liberty.] In old English law. Exemption from military service. *Spelman*.

**FIRDWITE**, *Ferdwite*. Sax. [from *fird*, military service, and *wite*, a mulct or fine.] In old English law. A fine for refusing military service, (*mulcta detrectantis militum*.) *Spelman*.

A fine imposed for murder committed in the army; an acquittance of such fine. *Fleta*, lib. 1, c. 47. *Chart.* 11 *Hen.* III. m. 33, cited in *Cowell*.

**FIRE AND SWORD**, *Letters of*. In old Scotch law. Letters issued from the privy council in Scotland, addressed to the sheriff of the county, authorizing him to call for the assistance of the county to dispossess a tenant retaining possession, contrary to the order of a judge or the sentence of a court. *Wharton's Lex*.

**FIREBARE**. Sax. In old records. A beacon, or high tower by the sea side, wherein were lights, either to direct sailors in the night, or to give warning of an enemy. *Cowell*. *Ordinat. temp. Edw.* II. cited *ibid*.

**FIREBOTE**. Sax. [from *fire*, and *bote*, an allowance.] An allowance of sufficient wood for fuel, for the use of a tenant for life or years. 2 *Bl. Com.* 35. 2 *Crabb's Real Prop.* 76, § 1044. *Spelman*, voc. *Bota*. Called in the old books, *estoverium ardendi*. See *Bote*, *Estovers*.

**FIRE INSURANCE**. A contract of insurance by which the underwriter, in consideration of the premium, undertakes to indemnify the insured against all losses in his houses, buildings, furniture, ships in port, or merchandise, by means of accidental fire happening within a prescribed period. 3 *Kent's Com.* 370. *Hughes on Ins.* 385. See *Fire policy*.

**FIRE ORDEAL**. In Saxon and old English law. The ordeal or trial by red-hot iron; which was performed either by taking up in the hand a piece of red-hot iron, of one, two or three pounds weight, or by stepping barefoot and blindfolded over nine red-hot ploughshares laid lengthwise at unequal distances. 4 *Bl. Com.* 348. *Cowell*. See *Ordeal*.

**FIRE POLICY**. A contract of insurance, by which, in consideration of a single or periodical payment of premium, (as the case may be,) the company engages to pay to the assured such loss as may occur by fire to his property therein described, within the period or periods therein specified, to an amount not exceeding a particular sum fixed for that purpose, by the policy. 2 *Steph. Com.* 180. See *Policy*, *Fire Insurance*.

**FIRMA**. L. Lat. [from Sax. *feorme*, *fearme*, provisions.] In old English law. A firm, ferm, or farm; a rent reserved on letting lands; (*reditus qui in elocandis prædiis domino elocanti reservatur*.) Anciently reserved in provisions. *Spelman*. *Blount*. *Precep. Will. Cong.* cited *ibid*. *Blount*, voc. *Hordeum palmale*. See *Farm*, *Ferm*.

A feast or entertainment. *Spelman*. *Huntingdon. Hist.* lib. 6 in *An.* 23 *Edw.* *Conf.* cited *ibid*. *Ranulf. Cestriens.* cited *ibid*. *Firma noctis*; a night's ferm; provisions or entertainment for a night, or the value of it: sometimes expressed by inversion, as *nox de firma*, a night of entertainment. *Firma diei*; a day's provisions or entertainment. These are common expressions in Domesday. *Spelman*.

A rent payable in money, (*reditus pecuniarius*.) *Spelman*. *Hoveden. in Johan.* *R. A. D.* 1199, cited *ibid*. *Pro certa firma inde annuatim reddenda*; for a certain rent thereof annually to be paid. *Reg. Orig.* 257 b. *De exitibus et proficuis, vel de firma domini nostri*; of the issues and profits, or of the rent of our lordship. *Id.* 265 b. *Cowell*, voc. *Firmaratio*. Called *alba firma*, *blanch firm*, or *white farm*, (qq. v.)

A lease or letting, (*elocatio*;) a term for years, (*terminus*.) *Adhuc viginti anni de firma illorum restent*; twenty years of their lease will yet remain. *Spelman*. *Ingulph. Sax. Hist. Croyl.* cited *ibid*. *Ad terminum, vel ad firmam*; for a term or ferm. *Bract.* fol. 30. *Salvo firmario firma et termino suo*; saving to the fermor, (termor or lessee) his farm and term. *Id.* fol. 163 b. *Non magis poterit firmarium ejicere de firma sua, quam tenentem aliquem de libero tenemento suo*; he can no more eject the

fermor (or lessee) from his farm (or term), than any tenant from his freehold. *Id.* fol. 220 b. *Ad firmam ponere vel dare*; to put or give for a ferm or farm. *Spelman. Chart. Hen. I. de Libert. Angl.* cited *ibid.* *Ad firmam dimittere, tradere, locare*; to demise, deliver, let for a farm. *Bract.* fol. 12 b, 44 b. See *To Farm let*.

A farm in the modern sense; a messuage and land, wood, &c., belonging to or used with it. *Co. Litt.* 5 a. *Shep. Touch.* 93. See *Farm*.

**FIRMA FEODI.** L. Lat. In old English law. A farm or lease of a fee; a fee farm. See *Feodi firma*.

**FIRMARIUS.** L. Lat. [from *firma*, a term.] In old English law. A lessee for a term; one having a term, ferm or farm in lands. *Stat. Marlbr. c. 24. Bract.* fol. 12 b, 44 b, 166 b, 178, 226 b. 2 *Bl. Com.* 318. Called anciently *fermor*, and sometimes *firmary*. Hence *farmer*, (q. v.) *Firmarius nihil habet nisi tantum usum-fructum*; the fermor or lessee has nothing but only the usufruct. *Bract.* fol. 261. *Id.* fol. 318. *Salvo firmario firma et termino suo.* *Id.* fol. 166 b, 12 b, 178. *Firmarii* comprehended all such as held by lease for life or lives, or for years, by deed or without deed. 2 *Inst.* 145. See 7 *Ad. & El. N. S.* 637.

**FIRMARATIO.** L. Lat. [from *firma*, a lease, or term.] In old records. Firming (farming,) or holding to firm, (farm.) The firmary's or farmer's right to the lands and tenements let to him *ad firmam*. *Cowell. Stat. Eccles. Paulinæ, MS.*, cited *ibid.*

**FIRMARIUM, Fermarium.** L. Lat. [from *firma*, provisions.] In old records. A place in monasteries, and elsewhere, where the poor were received and supplied with food. *Spelman.* Hence the word *infirmary*.

**FIRMATIO.** L. Lat. In the forest law. Doe season. *Cowell.*

**Firmior et potentior est operatio legis quam dispositio hominis.** The operation of the law is firmer and more powerful [or efficacious] than the disposition of man. *Co. Litt.* 102 a.

**FIRMITAS.** L. Lat. [from *firmus*, firm, sure.] In old European law. An assurance; a deed or charter confirmed by witnesses or seal, for assuring some privi-

lege, &c. *Spelman. Capitular. lib. 4, c. 37. L. Alaman. tit. 1, § 1, cited ibid.*

**FIRST FRUITS.** [L. Lat. *primitiæ*.] In English ecclesiastical law. The first year's whole profits of every benefice or spiritual living in England, anciently paid by the incumbent to the pope, and forming together with *tenths*, a revenue, which at the reformation was annexed to the crown by statute 26 Hen. VIII. c. 3. This revenue was by charter of Queen Anne, confirmed by statute 2 Anne c. 11, transferred to a perpetual fund (called from that circumstance Queen Anne's Bounty,) for the augmentation of poor livings. By statutes 5 & 6 Anne, benefices under £50 per annum, clear yearly value, were discharged from the payment of first fruits and tenths. 1 *Bl. Com.* 285, 286. 2 *Steph. Com.* 549, 550.

In feudal law. One year's profits of land which belonged to the king on the death of a tenant *in capite*; otherwise called *primer seisin*. One of the incidents to the old feudal tenures. 2 *Bl. Com.* 66, 67.

**FIRST PURCHASER.** The first acquirer (*perquisitor*.) of an estate. He who first acquired an estate to his family, or first brought an estate into the family which at present owns it, whether the same was transferred to him by sale, or by gift, or by any other method, except only that of descent. 2 *Bl. Com.* 220. 1 *Steph. Com.* 355. Styled among the Norman jurists, the *conqueror* or *conquerour*. *Grand Coust. Gloss. c. 25.* 1 *Steph. Com. ub. sup.* In the English law of descent this phrase seems to be less used than formerly. See 1 *Steph. Com.* 357, chap. xi. And see the opinion of Story, J., 2 *Peters' R.* 56, 89—94.

**FISC.** [from Lat. *fiscus*, q. v.] The treasury or property of a prince or state. Hence *confiscate*, (q. v.)

**FISCAL.** [Lat. *fiscalis*.] Relating to, or connected with the treasury of a prince or state.

**FISCAL JUDGE.** [L. Lat. *iudex fiscalis*.] An officer named in the laws of the barbarous nations of Europe; the same with the *grafio*, *graf*, *greve*, or *reeve*. *Spelman*, voc. *Grafio*. Called *fiscal*, because charged with the collection of public monies, either directly, or by the imposition of fines. *Id.* In the Riparian law he is said to be the same with the *comes* or count. *L. Ripuar. tit. 35. Esprit des Loix*, liv. 30, c. 18.

**FISCUS.** Lat. In the Roman law. The treasury of the prince or emperor, as distinguished from *ararium*, which was the treasury of the state. *Spelman. Plin. Pan.* 36. *Tacit. Annal.* vi. 2. *Culv. Lex. Jurid.*

The treasury or property of the state, as distinguished from the private property of the sovereign. *Dig.* 49. 14. *De jure fisci.* 1 *Mackeld. Civ. Law*, 149, § 144.

In English law. The king's treasury, as the repository of forfeited property. *Bona eorum fisco non vindicentur*,—*bona ipsorum confiscantur*; their goods shall not be claimed for the fisc or treasury,—their goods shall be confiscated. *Bract.* fol. 150.

The treasury of a noble, or of any private person. *Spelman.*

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The use of this word, in the sense of a treasury, is derived from its primary meaning, a wicker basket, or hamper, (*sporta*, *clitella*,) in which money was kept by the Romans, and carried about. That the early English kings sometimes carried their treasure with them in hampers of this kind is shown by *Spelman* in a quotation from the Book of the monastery of Ramsey, where a bishop is mentioned as having on one occasion borrowed of King Canute all the gold he had in his hampers, (*in clitellis regis*.) *Spelman* supposes this use of the word to be preserved in the hanaper or hamper office of the English court of chancery. But see 3 *Bl. Com.* 48, 49. Lord Coke speaks of a *fine* in the *hamper*. 5 *Co.* 44.

**FISH ROYAL.** [Lat. *piscis regalis*.] Whale and sturgeon; so called in English law, as belonging to the king by prerogative, when thrown ashore or caught near the coast. A branch of the king's ordinary revenue. 1 *Bl. Com.* 290. 2 *Steph. Com.* 554.

**FISHERY.** [L. Lat. *piscaria*.] A right or liberty of taking fish; a species of incorporeal hereditament, anciently termed *piscary*, of which there are several kinds. 2 *Bl. Com.* 34, 39. 3 *Kent's Com.* 409—418. *U. S. Digest & Supplement*, Fisheries. See *Common fishery*, *Free fishery*, *Several fishery*.

**FISK.** In Scotch law. The right of the crown to the moveable estate of a person pronounced rebel. *Wharton's Lex.*

**FIST.** L. Fr. [from *faire*, to make or do.] Makes; made. *L'estate de celuy que fist le releas*; the estate of him who makes the release. *Litt. sect.* 305.

*Did. Tout fist il le fait*; though he did the deed. *Britt. c.* 23.

**FISTUCA, Festuca.** L. Lat. In old English law. A staff or wand, by the delivery of which the property in land or other thing was formerly transferred. Called also *baculus*, *virga* and *fustus*. *Spelman.*

**FITZ.** L. Fr. Son; a son. *Britt. c.* 27, 89.

**FIXTURE.** A thing fixed to the freehold. *Archb. Landl. & Ten.* 359.—Any thing annexed to, (that is, fastened to, or connected with) the freehold. 2 *Smith's Lead. Cas.* 114.—An article of a personal nature affixed to the freehold. 2 *Kent's Com.* 344, 345.—A thing of an accessory character, annexed to houses or lands. 2 *Steph. Com.* 260.—A moveable thing which, either by the operation of nature, or by human art, is connected with an immovable thing in such a manner as to constitute a part of it. 1 *Mackeld. Civ. Law*, 152, § 147.—To be a *fixture*, a thing must, on the one hand, be of an *accessory* character, and, on the other, it must be in some *actual union* or connexion with the principal subject, and not merely brought into contact with it.\* 2 *Steph. Com.* 260.—Therefore the walls and floors of a house, being an original and necessary part of the principal subject, are not fixtures; and, on the other hand, buildings which merely rest upon the ground, without being fixed in, or to it, and pictures and glasses suspended against a wall are in no sense fixtures. *Id. ibid.* *Archb. Landl. & Ten.* 362. But see *infra*.

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Mr. Stephen considers the term *fixtures* as of popular origin. 2 *Steph. Com.* 260, note (i). It may be doubted, however, whether it is not derived, with the law of fixtures itself, from the civil law, in which the term *adfixa*, or *affixa*, (things fixed or fastened,) was used to denote these accessories. *Dig.* 50. 16. 245. See *Affixus*. It is not used in the common law, as the same writer justly observes, with much uniformity of meaning. Properly, it denotes something *fixed* and permanent, as distinguished from that which is removable, (the Lat. *fixum* having the sense not only of attachment or connexion, but of *stability*.) and in this respect the popular coincides entirely with the primary legal meaning; the general rule being, that a fixture once annexed to the realty cannot be removed, or separated from it, as against



the owner of the freehold or inheritance, to whom it belongs. 2 *Steph. Com.* 261. 2 *Smith's Lead. Cas.* 114. 2 *Kent's Com.* 343. From the various exceptions to this rule, however, which have been gradually established, a distinction has not only arisen between fixtures removeable, and irremoveable, but the word *fixtures* itself has been said to have acquired the peculiar meaning of chattels which have been annexed to the freehold, but *which are removeable* at the will of the person who annexed them. 1 *Cr. M. & R.* 276. *Grady on Fixtures*, 1, 2. More than this,—it has been said that the term *fixtures* does not necessarily mean things affixed to the freehold. 5 *Mees. & W.* 175. This goes to justify Mr. Chitty's remark that *fixture* is a term in general denoting the very reverse of the name. 1 *Chitt. Gen. Pr.* 161. And this idea has been carried so far in Pennsylvania, as to lead to the establishment of an entirely new definition of a fixture, viz.: something *essential to the use of the freehold*, whether *actually fastened to it or not*. 2 *Watts & Serg.* 116, 390. See 6 *Greenleaf's R.* 157. On the other hand, and as the opposite extreme of this doctrine, it has been held in Connecticut that *mere annexation* to the realty was not sufficient to give the attribute of a fixture to a chattel personal, unless it was *so annexed* that an injury would result to the freehold from the mere act of removal. 9 *Conn. R.* 67. And see 14 *Mass. R.* 352. A middle ground has been taken in New-York, between these two opinions. 20 *Wendell's R.* 636. These conflicting decisions, which are collected in 2 *Smith's Leading Cases*, 121, (Am. editor's note,) have tended to unsettle the definition of the term *fixture*, or rather to introduce a variety of definitions which are, in a greater or less degree, departures from the primary meaning above given. Fixtures are now usually divided into several kinds; as *landlord's fixtures*, *tenant's fixtures*, *trade fixtures*, and *farm or agricultural fixtures*. *Archb. Landl. & Ten.* 359. See *U. S. Digest & Supplement*, Fixtures.

**FLAG, Duty of the.** The ceremony of striking the flag and lowering the topsail of a vessel to the British flag, formerly practised as a solemn acknowledgment of British sovereignty over the British seas. *Molloy de Jur. Mar.* 80, 82. Called in an old record, "striking and veiling the *bonnet*." *Id.* 80, in *marg.*

**FLAGRANTE.** Lat. [from *flagrans*, burning.] In the heat, excitement, or actual commission of an act. *Flagrante de-*

*licto—maleficio—crimine*; in the heat of the offence, in the very act. *Bract. fol.* 233, 233 b. 4 *Bl. Com.* 307. *T. Raym.* 219. *Flagrante disseisina.* *Bract. fol.* 162 b. *Flagrante facto.* *Id.* fol. 231 b. *Flagrante bello*; during actual war. 1 *Kent's Com.* 76.

**FLANDRENSES.** L. Lat. In old English law. Inhabitants of Flanders; Flemings. *Sicut de terris Normannorum et Flandrentium.* *Bract. fol.* 87 b.

**FLAVIANUM JUS.** Lat. In the Roman law. The title of a book containing the forms of actions, published by Cneius Flavius, A. U. C. 449. 1 *Mackeld. Civ. Law*, 24, § 35. *Calvin's Lex. Jurid.*

**FLEDWITE.** Sax. [from *fled*, a fugitive, and *wite*, a fine.] In Saxon and old English law. A mulct or fine set upon an outlaw or fugitive, as the price of obtaining the king's pardon and peace. *Spelman, voc. Fletwite.* *Blount.*

The privilege of being quit from amercia-ments, when an outlawed fugitive came to the king's peace of his own will, or being licensed. *Rastal's Expos. of Words. Termes de la ley.* Sometimes confounded with *fletwite*, (q. v.)

**FLEET.** A prison in London, so called from Fleet river or ditch, near which it stood. *Selden's Diss. ad Flet. c.* 10, sect. 3. Formerly the prison of the court of chancery and the common pleas. Now, by statutes 5 & 6 Vict. c. 22, 6 & 7 Vict. c. 20, consolidated with the Queen's Bench and Marshalsea prisons into one, called the Queen's Prison, which is made the prison of all the courts. 3 *Steph. Com.* 254. *Tindal, C. J.*, 1 *Man. Gr. & S.* 463. See *Fleta*.

**FLEM, Flema, Flyma, Fleman.** [Sax. *flyma, flyman*.] In Saxon and old English law. A fugitive bondman or villein. *Spelman.*

The privilege of having the goods and fines of fugitives. *Id.*

**FLEMENESFIRINTHE.** Sax. *Blount* makes this to be properly *flymenafyrmtthe*, (Sax. *flyma*, a fugitive, and *fyrmtthe*, a receiving;) the receiving or relieving a fugitive. *LL. Inæ*, c. 29, 47. *LL. Hen. I. c.* 10, 12. *Cart. Edw. Conf. Monasterio de Waltham.* It seems to be the same with the *flemenfirma* of *Spelman*, (q. v.)

**FLEMENESWITE.** Sax. [from *flyma*,

a fugitive, and *wite*, a fine.] In Saxon and old English law. A fine imposed upon a fugitive. *Spelman*, voc. *Flema*.

**FLEMESWITE.** Sax. [from *flæme*, flight, and *wite*, a fine.] The same as *flemeneswite*, (q. v.) The liberty of having or claiming the chattels of a fugitive. *Blount*.

**FLEMENFIRMA**, *Flymenfirma*. Sax. & L. Lat. [from Sax. *flymen*, fugitives, and *firma*, from *feorme*, food.] In Saxon and old English law. The sustenance or support of fugitives, or outlaws. *LL. Hen.* I. c. 13.

The fine for such offence. *Id.* c. 11. *Spelman*.

**FLETA.** L. Lat. [from Sax. *fleeten*, to float or flow.] In old English law. An estuary; a stream, canal or ditch, where the tide ebbs and flows; (*æstuarium*, *fluentum*, seu *canalis quem aqua fluens et refluens occupat*.) *Spelman*. Hence the name of Fleet ditch in London, and of the Fleet prison which stood near it. *Id.* *Cowell*. See *Fleet*.

**FLETA.** The title of an ancient treatise on English law, written in the reign of Edward I. 2 *Reeves' Hist. E. Law*, 280. *Crabb's Hist.* 198. Its full title is *Fleta, seu Commentarius Juris Anglicani*; the name of *Fleta* being given to it, according to the author's explanation, because it was written during his confinement in the Fleet prison, from which circumstance it has been conjectured that he was one of those judges who fell under the displeasure of the king. *Id. ibid.* It is a general treatise on the law, in six books, written in Latin in the method of Bracton, from whom and Glanville the author copies largely. Mr. Reeves indeed calls him a mere imitator, and his work is obviously a compendium of Bracton, with considerable additions, however, showing what alterations had taken place in the law since Bracton's time. Mr. Selden has written a learned *Dissertation* on *Fleta*, which is annexed to most of the editions of this work.

**FLETH**, *Flet*. Sax. In old English law. Land. *Co. Litt.* 4 a.

A house. *Blount*, voc. *Flem & Fleth*.

**FLETWITE.** The same as *flitwite*, (q. v.)

**FLITWITE**, *Fletwite*. Sax. [Scotch *flitwite*; from Sax. *flit*, strife; and *wite*, a fine.] In Saxon and old English law. A

fine or mulct imposed on account of brawls and quarrels, (*mulcta ob contentiones, rixas et jurgia imposita*.) *Spelman*, voc. *Fletwite*.

**FLOD**, *Flud*. In old English law. Flood or high tide. *Dilationem habebit quadraginta dierum, et duorum flodorum et unius ebbæ*; he shall have a delay (or further time) of forty days, and two flood tides and one ebb. *Bract.* fol. 163. See *Flud*.

**FLODEMARK.** High water mark. *Anderson's R.* 189. *Blount*.

**FLOT.** L. Fr. A flow or flood; flood tide. *Un ebbe et un flot.* *Britt.* c. 44. *Un flot et un retret.* *Id.* c. 123.

**FLOTA.** L. Lat. A fleet. *Flota navium*; a fleet of ships. *Blount.* *Towns.* Pl. 68.

**FLOTAGES.** Such things as, by accident, float or swim on the top of the sea, or great rivers. *Blount*.

**FLOTANS.** L. Lat. Floating. *Towns.* Pl. 68.

**FLOTSAM**, *Floatsam*, *Flotson*. [from Sax. *fleeten*, to float.] Floating on the water. Goods lost by shipwreck, and which lie floating on the top of the water. *Cowell.* *Blount.* *Termes de la ley.* 5 Co. 106. 1 *Bl. Com.* 292. 1 *Crabb's Real Prop.* 508, § 657. This barbarous and uncouth appellation, as Blackstone terms it, is supposed by *Spelman* to be of German origin. It is exclusively applied to such goods as are cast out of a vessel by the violence of the winds or sea, as distinguished from such as are intentionally thrown overboard. See *Jetsam*.

**FLUD.** In old English law. Flood or flood tide. *Dantur easoniato—quadraginta dies ad minus, et unum Flud et unum ebbe.* *Bract.* fol. 338. See *Id.* fol. 338 b, 339.

**FLYMA**, (pl. *Flymen*.) Sax. A fugitive or outlaw. *Spelman*, voc. *Flema*.

**FOCALE.** L. Lat. [from *focus*, a hearth.] In old English law. Firewood, or fuel. *Cowell.* *Towns.* Pl. 68.

**FODERUM**, *Foderus*, *Fodrum*, *Fodrus*. L. Lat. [Sax. *foder*.] In old English law. Food for cattle; fodder. *Spelman*. Calvin calls it a German word.

In feudal law. A contribution of corn

or grain for the use of the king's army. *Spelman. Cowell. Hotoman de Verb. Feudal. Calv. Lex. Jur. Id. De Verb. Feud.*

FODINA. Lat. A mine. *Co. Litt.* 6 a.

FÆNUS NAUTICUM. Lat. In the civil law. Nautical or maritime interest. An extraordinary rate of interest, agreed to be paid for the loan of money on the hazard of a voyage; sometimes called *usura maritima*. *Dig.* 22. 2. *Code*, 4. 33. 2 *Bl. Com.* 458. *Molloy de Jur. Mar.* 357. 3 *Kent's Com.* 354, note.

FOESA. L. Lat. In old records. Grass; herbage. 2 *Mon. Angl.* 906 b. *Cowell.*

FOGAGIUM. L. Lat. In old English law. Fogage or fog; a kind of rank grass of late growth, and not eaten in summer. *Spelman. Cowell.*

FOINESUN. L. Fr. In old English law. The fawning of deer. *Spelman.*

FOIAL. L. Fr. Faithful. *Kelham.*

FOIR. L. Fr. To do. *Kelham.* A corrupt form of *faire*, (q. v.) *Foit, foits*; done; a deed. *Id.* See *Fait*.

FOITS, *Foitz*. L. Fr. Times. *Un foit*; one time; once. *Autre foit*; another time; before. *Ascun foits*; sometimes. *Sovent foits*; often times. *Tout foits*; at all times; always. *L. Fr. Dict.* *Une foitz, deux foitz et la tierce foitz*; once, twice and the third time. *Britt.* c. 30.

FOL, *Fole*. L. Fr. A fool; an idiot. *Fol nastre*; a born or natural fool. *Britt.* c. 36. *Fols nastres*. *Id.* c. 34.

FOLCLAND, *Folkland*. Sax. [from *folc*, people, and *land*.] In Saxon law. Land of the people or public, (*terra popularis*.) *Spelman.* So called, either because usually distributed among the common people, or because it was the property of the whole community; or, finally, because it was held by common right or law.\* A species of land among the Saxons, which was not held by any assurance in writing, and in that respect distinguished from *boerland*. *Terra popularis quæ jure communi possidetur, vel sine scripto.* *Spelman.*—Land held without writing, paying an annual rent, and liable to certain services. *Somner.* See *Boerland*.

*Folcland* has been supposed, by Sir W. Blackstone and other writers, to have been land held in villeinage, and resumable at the discretion of the lord. 2 *Bl. Com.* 90. *Crabb's Hist.* 13. *Gilb. C. Pleas, Introd.* 15. *Cowell.* Later researches into Saxon antiquities, however, have shown that though it was subject to many burthens and exactions, it might be held by freemen of all ranks and conditions. It is now supposed to have been the property of the community, which was parcelled out to individuals in the *folc-mote*, and granted for a certain term, on the expiration of which it reverted to the community. *Wharton's Lex.* *Allen on the Prerogative*, 140, et seq. 1 *Spence's Chancery*, 8.

FOLCMOTE, *Folkmete, Folgemote*. Sax. [from *folc*, people, and *mote*, or *gemote*, meeting.] In Saxon law. A meeting of the people; a general assembly of the people, to consider and order matters of the commonwealth. *Somner. Spelman, voc. Gemotum.*—Any popular or public meeting of all the *folk* or people of a place, or district. *Brande.* See *Gemote*.

A county court; an assembly of the people or freeholders of a county, (*conventus comitatûs*.) Otherwise called the *shire-mote*. *Spelman.*

A city court; an assembly of the inhabitants of a city or borough, (*conventus civitatis seu burgi*.) Otherwise called the *burgmote*. *Spelman.* The folcmote or city court of London is mentioned in ancient records. *Id.* *Crabb's Hist.* 141. The term seems to have been generally applied to all courts that were adapted to the convenience of the people within any district. *Id.* 26. See *Cowell*.

FOLCRIGHT, *Folkright*. [Sax. *folc-rihte*; from *folc*, people, and *rihte*, right.] Common right; that which is equally the right of all.\* This word occurs in the laws of King Edward the elder, and is thought by Lambard to be the same with common law; which, however, is questioned by *Spelman. LL. Edw. Senioris*, c. 1. *Spelman, voc. Jus commune.*

FOLDAGE. See *Faldage*.

FOLD COURSE. [L. Lat. *faldæ cursus*.] In English law. Land used as a sheep walk. *Hargr. Co. Litt.* note 23, lib. 1. Land to which is appurtenant the sole right of folding the cattle of others. *Id.*

The right of folding cattle. *Id.*

Common of foldage, or faldage. *Id.* See *Faldage, Faldæcursus*.

**FOLGARE**, *Fulgare*. L. Lat. [from Sax. *folgan*, to serve or follow.] In Saxon law. To establish one's self in a friborg or frankpledge, (*prosistere se in aliquo contubernio, friborga, seu fidejussione.*) *Spelman. LL. Aluredi*, c. 33, cited *ibid*.

To become the dependent or follower of another, (*tradere se alicui in clientelam*;) to serve, or follow, (*servire, sequi, sectari.*) *Spelman*.

**FOLGARII**, *Folgeres*. L. Lat. [from Sax. *folger*, a follower.] In Saxon law. Followers; retainers; dependents or servants. *Spelman. LL. Hen. I. c. 9*, cited *ibid*.

**FOLGHERES**. Sax. In old English law. Followers or servants. *Alii qui illis deserviunt, qui dicuntur folgheres. Bract. fol. 124 b.*

**FOLIO**. [from Lat. *folium*, a leaf.] A leaf of a book or manuscript.

In old practice. A leaf or sheet of parchment or paper, containing a certain number of words.

In modern practice. A certain number of words, without reference to the paper or parchment on which they are written. In English practice, a *folio* in law proceedings is seventy-two words; in chancery, ninety words. *Wharton's Lex.* In New-York, a *folio* was formerly seventy-two words. 2 *Rev. Laws of 1813*, 15 *et seq.* It is now one hundred words, counting every figure, necessarily used, as a word. 2 *Rev. St. [650]*, 542, § 4. *Id.* [753, § 16], 631, § 17.

The term *folio*, in this last sense, seems to have originated in the practice of writing a certain number of words on a sheet, which, becoming invariable, gave the name of the sheet or leaf (*folio*;) to the number of words written upon it. 3 *Bl. Com.* 323. Hence the expression in the New-York act first quoted above,—“each sheet containing seventy-two words.”

**FONT**, *Fount*. L. Fr. [from *faire*, to make.] (They) make or made. *L. Fr. Dict.*

(They) do or did. *Id.*

**FONTANA**. Lat. A fountain or spring. *Bract. fol. 233.*

**FOOT** of a fine. In old conveyancing. The conclusion of a fine, reciting the parties, day, year and place, and before whom it was acknowledged or levied. 2 *Bl. Com.* 351.

**FOOTGELD**. [geld, Sax. a payment or fine.] In old English law. An amer-  
ciament for not cutting out the balls of dogs' feet in the forest. *Termes de la ley. Manwood*, c. 25, num. 3. *Cowell*.

**FOR**, *Fore, Fors*. L. Fr. [from Lat. *foris*.] Out; without. See *Fors*.

**FOR WHOM IT MAY CONCERN**. A general clause in policies of insurance, intended to embrace all persons who have an insurable interest in the property, and a lawful right to be insured. 2 *Duer on Ins.* 29, § 21. 1 *Phillips on Ins.* 152.

**FORANEUS**. Lat. [from *foris*, without.] One from without; a foreigner; a stranger. *Calv. Lex. Jur.*

**FORATHE**. [from Sax. *for*, and *athe*, oath.] In old forest law. One who could swear or make oath for another. *Spelman*.

**FORBALCA**. L. Lat. In old records. A forebalk; a balk (that is, an unploughed piece of land,) lying forward or next the highway. *Cowell*.

**FORBANNITUS**, *Forisbannitus*. L. Lat. [from Ital. *fore*, Lat. *foris*, without, and *bannitus*, proclaimed, proscribed.] In old European law. Banished; outlawed. *Spelman. LL. Longob. lib. 1, tit. 25, c. 62*, cited *ibid*. *Spelman* calls this a Lombardic word.

**FORBANNUM**. L. Lat. Proscription; banishment. *Spelman, voc. Forbannitus. LL. Longob. lib. 1, tit. 25, l. 63*, cited *ibid*.

**FORBARRER**. L. Fr. In old English law. To bar out; to prevent or preclude; to estop.\* To bar or deprive forever. *Stat. 9 Ric. II. c. 2. Stat. 6 Hen. VI. c. 4. Cowell*.

*Forbarres*; barred, prevented, or estopped. *Britt. c. 119. Stat. Gloc. c. 3. Litt. sect. 640.*

**FORBATUDO**, *Forbatudus*. L. Lat. [from Sax. *fore*, before, and Fr. *batre*, to beat or strike.] In old European law. The first striker; he who struck the first blow, (*primus feriens*;) or offered the first wrong, (*primam inferens injuriam*.) A term applied to one who was slain in a quarrel of his own provoking, and by his own fault; as by one upon whom he made an assault; (*qui vim aut injuriam alteri inferens, culpâ suâ occiditur.*) *Spelman*.

**FORCE.** L. Fr. & Eng. [L. Lat. *fortia*; Lat. *vis*.] Strength; compulsory power; mere strength or power exercised without law, or contrary to law; violence.\*—An offence by which violence is used to persons or things. *West's Symbol.* part 2, tit. *Indictments*, § 65. *Cowell.*

*Force* is now generally used in a bad sense, to denote *unlawful* force or violence, (*vis injusta*.) *Co. Litt.* 161 b. *Cowell.* Anciently, however, various kinds of force were recognized; as *simple* force, and *violent* force; violent force *without arms*, and violent force *with arms*, or armed force; *lawful* force and *unlawful* force; with many more refined distinctions now obsolete. *Bract.* fol. 162. Bracton defines *force*, (*vis*), without any qualifying epithet, to be "the onset or pressure of a greater thing which cannot be resisted," (*majoris rei impetus cui resisti non potest*.) *Id. ibid.* The same author gives as an example of force *without violence*, that kind of force which was exerted against a thing *not* at the time in any one's possession, (*sicut in rem vacuum*.) *Id. ibid.* So Britton distinguishes between *force* and *arms*, and simple force *without arms*, giving as an instance of the latter, force by a *multitude of people*; (*et si y ad force et armes, ou force simple sauns armes, sicome par multitude de gentz*.) *Britt.* c. 53. See *Force and arms, Vis.*

**FORCE.** L. Fr. & Eng. [Lat. *vis*.] Validity; efficacy; power in law to bind or coerce. An obligation or law is said to be "of force," or "in force," so long as compliance with it can be lawfully coerced. The word had the same sense in law French. *Voyde et de nul force*; void and of no force. *Britt.* c. 52. *De ci graund force*; of so great force. *Stat. Mod. Lev. Fines.*

**FORCE.** L. Fr. [L. Lat. *fortia*.] In old English law. A technical term applied to a species of accessory before the fact. *Stat. Westm.* 1, c. 14. See *Fortia*.

**FORCE AND ARMS.** [L. Fr. *force et armes*; L. Lat. *vis et arma*.] A phrase in the old law of trespass and disseisin, importing that the act was committed by *multitude* of people, with *arms* or weapons of offence. Otherwise expressed as *force of arms*, and *force with arms*, and sometimes *armed force*. *Britt.* c. 53. *Litt.* sect. 240. See *Force*. The word *arms* had, in this connexion, its full proper sense of military equipment. Thus Britton (*ub. sup.*) speaks of disseisin committed with banner dis-

played and horses arrayed, (*a baner despleye, ou a chivaus covertz*.)

The phrase "with force and arms," (*vi et armis*), was also anciently a necessary phrase in pleading, and is still used in declarations for trespass and in criminal indictments, though with little of its original significance. 2 *Chitt. Pl.* 846, 850. *Wharton's Prec. of Indict.* 5, 9. In indictments it is held to be no longer essential. *Id. ibid.* See *Vi et armis*.

**FORCELET.** L. Fr. A fortress. *Stat. Westm.* 1, c. 17.

**FORCERIUM.** L. Lat. In old English law. A strong box, or chest for keeping papers. *Quare quoddam forcerium vel cistam—fregit.* *Reg. Orig.* 94 b, 95.

**FORCHER.** L. Fr. In old practice. To divide, in the process of essoining; to fourch. *Stat. Westm.* 1, c. 43. See *Fourcher*.

**FORCIA.** L. Lat. Force. *Towns. Pl.* 116. More commonly written *fortia*, (q. v.)

**FORCIBLE ENTRY.** An entry with strong hand, or with multitude of people, as distinguished from a peaceable entry. *Stat. 5 Ric. II.* c. 8. 2 *N. Y. Rev. St.* [507,] 418, § 1.—A violent actual entry into a house or land. *Termes de la ley.* *Cowell.*—An offence against the public peace, committed by violently taking possession of lands and tenements with menaces, force and arms, and without the authority of law. 4 *Bl. Com.* 148. 4 *Steph. Com.* 280. 2 *Chitt. Gen. Pr.* 231, 233, *et seq.* *Lewis' U. S. Crim. Law*, 274, *et seq.* *U. S. Digest and Supplement*, Forcible Entry and Detainer.

**FORCIBLE DETAINER.** The offence of violently keeping possession of lands and tenements, [either after a peaceable or forcible entry,] with menaces, force and arms, and without the authority of law. 4 *Bl. Com.* 148. 4 *Steph. Com.* 280. See *Forcible entry*, and the authorities *ibid.* To constitute a forcible detainer, there must be actual force, with strong hand, except where the parties stand in the relation of landlord and tenant. 3 *A. K. Marshall's* (Ky.) *R.* 1145, [296.]

**FORCLORRER, Foreclose.** L. Fr. [from *for*, out, and *clore*, to shut.] To shut out, or exclude; to foreclose. *Et forclorra le frere et la soer*; and shall shut out the brother and the sister. *Britt.* c. 119.

*Forclos, forclos*; shut out, barred or foreclosed. *Britt. c. 5, '73. Stat. Gloc. c. 3. Forecloses. Stat. Mod. Lev. Fin. 2 Inst. 510.*

**FORDA.** L. Lat. In old records. A ford or shallow, made by damming or penning up the water. *Cowell.*

**FORDANNO.** [from Germ. *bor*, or Sax. *fore*, before, and *annen*, to assault.] In old European law. He who first assaulted another. *Spelman.*

**FORDIKA.** L. Lat. In old records. Grass or herbage growing on the edge or bank of dykes or ditches. *Cowell.*

**FORDAL.** Sax. [L. Lat. *fordalia, fordalis*; from Sax. *for*, before, and *dæl*, a part or portion.] In old records. A front piece or head of land; a headland or butt.\* *Cowell.*

**FORE.** Sax. Before.

**FORE.** L. Fr. Out. See *For*.

**FORECHEAPUM.** L. Lat. [from Sax. *fore*, before, and *ceapan*, to buy.] In old records. Pre-emption. *Blount.*

**FORECLOSE.** [from L. Fr. *forcloser*, q. v.] To shut out or exclude; to bar. 2 *Inst. 298. Stat. 33 Hen. VIII. c. 39.*

In equity practice. To bar an equity of redemption. 1 *Steph. Com. 284. 1 Daniell's Chanc. Pr. 262.*

**FORECLOSURE.** In equity practice. The process of barring the equity of redemption of a mortgagor, by filing a bill for that purpose, called a bill of foreclosure. 2 *Barbour's Chanc. Pr. 171, 186. 2 Crabb's Real Prop. 918. 4 Kent's Com. 180.*

**FOREGIFT.** See *Forehand rent*.

**FOREHAND RENT.** In English law. A kind of premium paid by a tenant on taking a lease. Sometimes called *foregift*, but more usually a *fine*. 1 *Crabb's Real Prop. 171, § 155.*

**FOREIGN, Forein.** [from L. Fr. *forein, foreyn, forain*; Lat. *forinsecus*; from *foris*, without, on the outside.] That which is without or beyond the limits of a particular territory, district or jurisdiction; as a *foreign nation*, a *foreign state*, a *foreign county*, (qq. v.)

That which *belongs without*, or to another jurisdiction; as *foreign matter*, a *foreign answer*, (qq. v.)

That which *originates* or *comes from without* or abroad, or is subject to another jurisdiction; as a *foreigner*, (q. v.)

That which is *done* or transacted *without*, or in another territory or jurisdiction; as a *foreign assignment*, a *foreign judgment*, a *foreign marriage*, (qq. v.)

That which *operates without*, or in another territory or jurisdiction; that which goes abroad; as a *foreign bill of exchange*, (q. v.)

Extrinsic or irrelevant; belonging elsewhere; (L. Fr. *dehors*.)

Extraordinary or *extra*. See *Foreign Apposer*.

It was argued in *Spratt v. Spratt*, (1 *Peters' R. 343*,) that *foreign* properly signified that which had an *origin* abroad; and the derivation of the word from *foris*, (without,) and *origo*, (origin,) was relied on. But this seems hardly so good an etymology as *foris* and *regnum*, which has also been given. Both these conjectures appear to be based entirely on the presence of the letter *g*, which, however, is a mere variation of spelling *forein*, (as *darreign* was of *darrein*,) the word itself being essentially French. *Foreign* or *forein*, (as it is written by Blount) seems clearly derived, by the simple process of contraction, from the Lat. *forinsecus*, the signification of which was by no means limited to the idea of *origin*. See *Forinsecus*.

*Foreign*, in common speech, has, in most of its applications, the sense of remoteness. But this idea has never entered into its legal meaning. Hence, in American law, the several states of the Union are, in certain points of view, *foreign* states to each other, though the states to which the term is applied may be immediately adjacent. See *Foreign state*. So each county in a state, considered with reference to the others, is a *foreign county*. See *Foreign county*. And in old English law the term was applied to still smaller subdivisions, as a lord's fee; and even to an outside ridge or furrow of land. See *Foreign service, Forinsecus*.

**FOREIGN ANSWER.** [L. Lat. *forinseca responsio*.] In old English practice. An answer which was not triable in the county where it was made. *Stat. 15 Hen. VI. c. 5. Cowell, voc. Foreign.*

**FOREIGN APPOSER, (or OPPOSER.)** [L. Lat. *forinsecus oppositor*.] In old English law. An officer in the exchequer whose

business was to examine sheriffs' estreats with the record. So called, according to Cowell and Blount, (who write the word *opposed*,) because he *opposed*, that is, questioned or interrogated the sheriff as to every particular sum specified. Lord Coke, however very distinctly writes the word *opposer*. "*Forinsec' oppositor*, the foreign *opposer*; he doth *oppose* all sheriffs and bailiffs of liberties, of their green wax." 4 *Inst.* 107. The word may be essentially the same with *controller* (*contra-rotulator*) the radical idea of which was opposition.

From Coke's explanation of the duties of this officer, it may be gathered that he was denominated *foreign* because he dealt with such items as were not within the ordinary accounts of the sheriff; it being the province of the escheator to deal with such matters as were "*within the sheriff's accounts*." *Foreign opposer* may therefore not inaptly be defined, an *extraordinary* or special *controller* or auditor.

**FOREIGN ASSIGNMENT.** An assignment made in a foreign country, or in another state. 2 *Kent's Com.* 405—408, and notes.

**FOREIGN ATTACHMENT.** [L. Lat. *attachamentum forinsecum*.] In English practice. An attachment of the property of a foreign or absent debtor.\* A judicial proceeding peculiar to certain cities and towns in England, by means of which a creditor may obtain the security of the goods or other personal property of his debtor, in the hands of a third person, for the purpose, in the first instance, of enforcing the appearance of the debtor to answer to an action; and afterwards, upon his continued default, of obtaining the goods or property absolutely, in satisfaction of the demand. *P. Cyclopædia*. Called *foreign*, because it operates against a *foreign* debtor, or a debtor *out* of the jurisdiction within which the property is found. See *Foreign*. Cowell defines it "an attachment of a *foreigner's* goods found within a liberty or city, in the hands of a third person, for the satisfaction of some citizen to whom the said *foreigner* oweth money."

The proceedings, as carried on in the Mayor's court of London, are in the form of an action supposed to be commenced by summons against the debtor, on the return of which a suggestion is supposed to be made by the plaintiff to the court, that some third person within the city has goods of the defendant in his possession, or owes him debts, by which goods or debts the plaintiff prays that the defendant may be at-

tached until he appears to answer the action brought against him. In point of fact, the first proceeding is an affidavit of the debt, made by the plaintiff or creditor, upon which an entry of the supposed action is made in the action book kept in the mayor's court office, and then the plaintiff's attorney proceeds immediately against the third party, or *garnishee* as he is called, by attachment and summons. See the proceedings described at length in *Magrath v. Hardy*, 4 *Bing. N. C.* 782. The English foreign attachment is founded entirely upon local customs, and is an exception to the general law of the land.

In the United States, a similar process has been adopted against the property of absent, non resident and absconding debtors, and called in some states *trustee*, and in other *garnishee process*. The practice however is, in many respects, different from the English, being regulated by the statute and local law of each state. See 2 *Kent's Com.* 401, 403, note. *U. S. Digest & Supplement*, Absent and Absconding Debtors. Story, J., 4 *Mason's R.* 447.

#### FOREIGN BILL OF EXCHANGE.

A bill of exchange drawn in one state or country, upon a foreign state or country. *Story on Bills*, § 22.

A bill of exchange drawn in one country, upon another country not governed by the same homogeneous laws, or not governed throughout by the same municipal laws. *Id. ibid.* A bill of exchange drawn in one of the United States, upon a person residing in another state, is a foreign bill. 2 *Peters' R.* 586. 10 *Id.* 572, 579. 12 *Id.* 54. 3 *Kent's Com.* 94, note.

**FOREIGN CORPORATION.** A corporation created by or under the laws of another state, government or country.\* 2 *N. Y. Rev. Stat.* [459.] 375, § 15.

**FOREIGN COUNTY.** In practice. Another county in the same state; whether remote or adjacent.\* *Stat. Westm.* 1, c. 45. See *Foreign answer*, *Foreign matter*, *Foreign jury*.

**FOREIGN DIVORCE.** A divorce obtained out of the state or country where the marriage was solemnized. 2 *Kent's Com.* 106, *et seq.*

**FOREIGN ENLISTMENT ACT.** The statute 59 Geo. III. c. 69, prohibiting the enlistment, as a soldier or sailor, in any foreign service. 4 *Steph. Com.* 226.

**FOREIGN JUDGMENT.** A judgment obtained in a foreign court, or in the court of a foreign country. 2 *Kent's Com.* 118—121 and notes.

**FOREIGN JURY.** In practice. A jury from another, or foreign county. 1 *Burr. Pr.* 211, 442.

**FOREIGN LAW.** The law of a foreign country or state. The laws of another state [of the American Union] are to be proved, like foreign laws. 1 *Rawle's R.* 386. *U. S. Digest & Supplement*, Foreign laws.

**FOREIGN MATTER.** In old practice. Matter triable or done in another county. *Cowell*, voc. *Foreign*.

**FOREIGN PLEA.** [L. Lat. *forinsecum placitum*.] In old pleading. A plea objecting to a judge as incompetent, because the matter in hand was not within his precinct. *Kitch.* 75. *Stat. 4 Hen. VIII.* c. 2. *Stat. 22 Hen. VIII.* c. 2, 14. *Cowell*, voc. *Foreign*. A plea to the jurisdiction.

**FOREIGN PORT.** A port exclusively within the sovereignty of a foreign nation. 2 *Gallison's R.* 4, 7. *Id.* 501. *Marshall*, C. J., 1 *Brock. R.* 235, 239. A foreign port or place is a port or place without the United States. 19 *Johns. R.* 375.

**FOREIGN SERVICE.** [L. Lat. *forinsecum servitium*.] In old English law. The service by which a mesne lord held over of another, without (*foris*) the compass of his own fee. *Bro. Abr.* Tenures, fol. 28, 95, 251. *Kitch.* 209. *Cowell*, voc. *Foreign*.

The service which a tenant performed either to his own lord, or to the lord paramount, out of his fee. Called *foreign* (*forinsecum*) because it was done and taken without, (*foris*), or besides (*extra*) the service done to the lord paramount. *Bract.* fol. 36. See *Forinsecus*, *Forinsecum servitium*.

**FOREIGN STATE.** A state occupying a foreign territory, or not comprised within the limits of another state or nation.\* An Indian nation occupying a territory within the acknowledged boundaries of the United States is not a *foreign state*, in the sense in which that term is used in the constitution of the United States. *Marshall*, C. J., 5 *Peters' R.* 1, 17. See 6 *Id.* 515.

A state governed by local or municipal laws different from those of another state.\* *Story on Bills*, § 22. The several states of the American Union are, in certain re-

spects, foreign states to each other. See *Foreign bill of exchange*.

**FOREIGN VOYAGE.** A voyage to some port or place within the territory of a foreign nation. 3 *Kent's Com.* 177, note. 1 *Gallison's R.* 55. The *terminus* of a voyage determines its character; if it be within the limits of foreign jurisdiction, it is a foreign voyage, and not otherwise. 1 *Story's R.* 1.

**FOREIGNER.** An alien; the opposite of citizen. 1 *Peters' R.* 343. A person born in and owing allegiance to a foreign state or country.\* A foreigner who becomes a citizen is no longer a foreigner. *Marshall*, C. J., 1 *Peters' R.* 349. See *Alien*.

**FOREIN.** An old form of *foreign*, (q. v.) *Blount*.

**FOREIN, Forrein, Forreine, Foreyn.** L. Fr. [from Lat. *forinsecus*, q. v.] Foreign; belonging without. *Home forein*; a foreign person. *Stat. Westm.* 1, c. 23. *Forreine counties.* *Id.* c. 45. *Et vouch forrein a garranty.* *Stat. Gloc.* c. 12. *En foreyn*; out of a lord's jurisdiction. *Britt.* c. 15.

**FOREJUDGE, Forjudge.** [L. Fr. *forjurer*, from *for*, out, and *jurer*, to adjudge; L. Lat. *forisjudicare*, q. v.] In old English law and practice. To expel from court, for some offence or misconduct. When an officer or attorney of a court was expelled for any offence, or for not appearing to an action by bill filed against him, he was said to be *forjudged the court.* *Cowell.* *Stat.* 2 *Hen. IV.* c. 8. See *Forjudicare*.

To deprive, or put out of a thing by the judgment of a court. See *Forjudicare*.

To expel, or banish. See *Id.*

**FOREJUDGER, Forjudger.** [L. Lat. *forisjudicatio*.] In English practice. A judgment by which a man is deprived or put out of a thing; a judgment of expulsion or banishment. See *Forejudge*.

**FORENSIS.** Lat. [from *forum*, a court.] Belonging to, or connected with a court; forensic. *Forensis homo*; an advocate; a pleader of causes; one who practices in court. *Calv. Lex*.

**FOREPRISE.** See *Forprise, Foresprise*.

**FORERA.** L. Lat. [from Sax. *fore*, before, or in front.] In old English law.



Land lying *before*, or in front of other land; a foreland;\* a headland, (*terra capitalis*.) *Cowell*. *Spelman*. A piece of land lying crosswise of another, (*terra transversalis*;) and opposing its side to the end, front or head of the other piece. *Spelman*. See *Headland*.

**FORESCHOKE**, *Forschoke*. Forsaken. *Cowell*.

**FOREST**. [L. Lat. *foresta*, *forestis*, *forestum*; from *foris*, or *foras*, without, according to *Spelman*; that is, *out* land, or *outer* land, (*pars forastica, seu exterior*;) as lying *out* of the cultivated or inhabited country.] In English law. A large extent or precinct of country, generally waste and woody, belonging to the sovereign, set apart and privileged for the keeping of game for his use and diversion, (*alendis feris regis exposita*;) not enclosed, but distinguished by certain limits and peculiarly protected by certain laws, courts and officers of its own.\* *Spelman*, voc. *Foresta*. *Manwood*, part 2, c. 1. *Termes de la ley*. 2 *Steph. Com.* 17. 1 *Bl. Com.* 289. 1 *Crabb's Real Prop.* 91, § 97. *Id.* 484, § 624.—A royal chase, or hunting ground.\*

The right or franchise enjoyed by a subject, of having a forest. 2 *Steph. Com.* 17. *Cro. Jac.* 155. 1 *Crabb's Real Prop.* 484, § 624. This, however, according to *Spelman*, is an improper use of the word; a forest in the hands of a subject being properly a *chase*. *Spelman*, voc. *Foresta*. 2 *Bl. Com.* 38. See *Chase*.

Lord Coke, following the Black Book of the Exchequer, makes the Lat. *foresta*, to be as it were *feresta*, from *ferarum statio*, a station or safe abiding place for wild animals; and the same derivation is essentially adopted by Calvin. *Co. Litt.* 233 a. *Calv. Lex. Jur.* But *Spelman* much more reasonably supposes it to be derived from *foris*, or *foras*, without, as lying *without* and separate from the cultivated and inhabited country; being indeed abandoned to a state of nature, for the more effectual preservation and increase of the wild animals harbored within its precincts; (*extraneum quiddam, et feris datum*.) *Spelman*, voc. *Foresta*. *Tula ferarum mansio*. *Lib. Nig. Scacc.* cited *ibid.* Hence a forest was deemed to be not of the body of any county. *Spelman* supposes the word *foresta* to have been introduced by the Normans. The Danes and Saxons made use of the terms *buc-holt*, (buck-wood,) and *dere-fald*, (deer-fold.) *Spelman*, *ub. sup.* For a very recent case involving the definition of a forest, see 1 *W. & G. H. & Gordon*, 211.

**FOREST COURTS**. Certain courts in England, instituted for the government of the king's forests in different parts of the kingdom, and for the punishment of all injuries done to the king's deer or venison, to the vert or greensward, and to the covert in which such deer are lodged. They consist of the courts of attachments, of regard, of swein-mote, and of justice-seat. 3 *Bl. Com.* 71. 3 *Steph. Com.* 439. They are said to be now fallen into absolute desuetude. *Id. ibid.* But see the late case of *Regina v. Conyers*, 8 *Ad. & Ell.* N. S. 981. See *Attachments*, *Regard*, *Sweinmote*, *Justice seat*.

**FOREST LAW**. A system of law anciently established in England, for the government of the royal forests, and administered by courts and officers of its own. That it existed before the Norman conquest appears from the laws or constitutions of Canute, which have been preserved; but it was first established with all its oppressive peculiarities by the princes of the Norman line. *Spelman*, voc. *Foresta*. 2 *Steph. Com.* 18. Its severities and abuses were mitigated by the *Carta de Foresta*, 9 Hen. III., and a variety of subsequent statutes; and since the era of the Revolution it is said to have fallen into total disuse. 2 *Bl. Com.* 415. 3 *Id.* 73. 2 *Steph. Com.* 18, 19. 1 *Reeves' Hist. Eng. Law*, 254, *et seq.* But see 8 *Ad. & Ell.* N. S. 981. *Manwood* is the principal authority in forest law, and was extensively quoted in the recent case last cited.

**FORESTA**, *Forestis*, *Forestum*, *Forasta*. L. Lat. A forest. *Spelman*. *Lib. Nig. Scacc.* cited *ibid.* See *Forest*.

**FORESTAGIUM**. L. Lat. [from *foresta*, q. v.] A duty or tribute payable to the king's foresters. *Cowell*. *Blount*. *Chart.* 18 *Edw. I.*, cited *ibid.*

**FORESTALL**, *Forstall*, *Forestal*, *Forstal*. Sax. [from *fore*, before, or *fare*, a way, and *stal*, or *stæl*, a standing or stopping; L. Lat. *forstallare*.] To obstruct or stop up a way, (*viam præpedire*;) to stop the passage of a person or thing on the highway; to intercept on the road. *Spelman*, voc. *Forstall*. 3 *Bl. Com.* 170. *Co. Litt.* 161 b. See *Forestalling*.

**FORESTALLER**. [L. Lat. *forstallatio*.] In English law. The obstruction of a way or road, or the hindering a person or thing from passing. The besetting of a way by a tenant, in order to prevent his lessor from

coming on the premises. 3 *Bl. Com.* 170. The lying between a deer and the forest, in the way he was to return, so as to stop him from returning. *Crompt. Jurisd.* 153.

**FORESTALLER**, *Forstaller*. [L. Lat. *forstallator, forstallarius*.] One who fore-stalls, or is guilty of the offence of forestalling. See *Forestalling, Forstallarius*.

**FORESTALLING**. [L. Lat. *forstallatio*.] The obstructing of a way; the interception of a person or thing on a road. See *Forstaller, Forstol*.

*Forestalling the market* is the buying or contracting for any merchandise or provision on its way to the market, with the intention of selling it again at a higher price; or the dissuading persons from bringing their goods or provisions there; or persuading them to enhance the price when there. 4 *Bl. Com.* 158. This was formerly an indictable offence in England, but is now abolished by statute 7 & 8 Vict. c. 24. 4 *Steph. Com.* 291, note.

**FORESTARIUS**. L. Lat. [from *forresta*, a forest.] In old English law. A forester; an officer appointed to take care of a wood or forest. Where a tenant in dower had committed waste in a wood, there was an old writ *de forestario apponendo*, which lay for the appointment of a forester to take charge of the wood, and see that no further waste was done. *Bract. fol.* 316.

**FORESTER**. [L. Lat. *forestarius*.] In English law. A sworn officer of the forest, appointed by the king's letters patent, to walk the forest both early and late, watching both the vert and the venison, attaching and preventing all trespasses against them within his bailiwick or walk. *Cowell. Blount*.

**FOREVER**. [Lat. *in perpetuum*.] This word in a devise of land will pass a fee. *Co. Litt.* 9 b.

**FORFACERE**. L. Lat. To forfeit. *Spelman*, voc. *Forisfacere*. See *Forisfacere*.

**FORFACTUM**. See *Forisfactum, Forfactus*.

**FORFACTURA**. L. Lat. A forfeiture. *Spelman*, voc. *Forisfacere*. See *Forisfactura*.

**FORFACTUS**, *Forfactum*. L. Lat.

[L. Fr. *forfait*.] In old European law. Forfeited. *De rebus forfactis quæ per diversos comitatus sunt, volumus ut ad palatium pertineant, transacto anno et die*; concerning things forfeited, which are in different counties, we will that they belong to the palace, [or fisc, that is, that they be confiscated,] after a year and a day. *LL. Longobard.* lib. 3, tit. 33. *Spelman*, voc. *Forisfacere*. See *Forisfactus*.

**FORFAIRE**. L. Fr. [from Lat. *forisfacere*, q. v.] To forfeit. *Forface*; shall forfeit. *Britt.* c. 12. *Forfst*; forfeited. *Et issi forfst ele dower*; and so she forfeited dower. *Id.* c. 110. *Forfait, forfait*; forfeited. *Id. ibid. Kelham*.

**FORFANG**, *Forfeng, Forefeng*. Sax. [from *fore*, before, and *fangen*, to take; L. Lat. *antecaptio, preventio, prior prisa*.] In Saxon law. A previous taking; a taking of provisions from any person in fairs or markets, before the king's purveyors were served with necessaries for the sovereign. *Spelman. LL. Inæ*, cited *ibid. Cowell. Fleta*, lib. 1, c. 47.

**FORFEIT**. [L. Fr. *forfait, forfait*; L. Lat. *forfactum, forisfactum*.] Lost by one's fault or misconduct; forfeited. See *To Forfeit*.

To **FORFEIT**. [from L. Fr. *forfaire*; L. Lat. *forisfacere, forfacere*; from *foris*, without, and *facere*, to make.] To lose what belongs to one by some fault, misconduct or crime, (*rem suam ex delicto amittere*;) to make it *foreign* to one's self, (*sibi extraneum facere*;) or put one's self out of it; to lose it to another, (*rem culpa abdicere, alterique adjudicare*;) to transfer involuntarily, as the consequence of one's own wrongful act, and by operation of law.\* *Spelman*, voc. *Forisfacere*. Forfeiture involves the ideas not only of *loss* by the delinquent party, but of *transfer* or *surrender* to some other, whether it be an individual or the state. Thus, lands are *forfeited* by one individual to another, as by a wrongful alienation, by breach of some condition, &c. In the feudal law, they were *forfeited* to the lord by the misconduct of the tenant. See *Forfeiture*. Lands and goods are *forfeited* to the state as the consequence of crime; office is *forfeited* to the state as the consequence of misconduct, and life itself is sometimes *forfeited* to the law, as the penalty of its violation.

To incur a penalty, (*multam incurrere*.) *Spelman*, voc. *Forisfacere*. To become liable to the payment of a sum of money,

as the consequence of a certain act. Penal statutes frequently provide that a party found guilty of violating their provisions shall *forfeit* a sum of money, or article of property.

To confiscate. *Id.* To *forfeit* and to *confiscate*, *forfeited* and *confiscated*, have sometimes been used as synonymous terms. There seems, however, to be an obvious distinction between them, though it has been differently expressed by different writers. According to Staundford, goods are properly said to be *forfeited* where they have a known owner, who has committed some offence whereby he loses them; and *confiscated* when they are disavowed by an offender, as not his own, nor claimed by any. *Staundf. Pl. Cor.* fol. 186. Cowell makes *forfeiture* to be the more general term, and *confiscation* to be the particular forfeiture to the king's exchequer. The true distinction, however appears to be, that *forfeiture* is the act of the individual, *confiscation* that of the state. The individual forfeits his property, the state confiscates it as forfeited. That the terms are not convertible is shown in the absurdity of saying that the state forfeits, or the individual confiscates. The property is *forfeited* the instant the illegal or wrongful act of which forfeiture is declared to be the punishment, is committed; but it is not *confiscated*, that is, it does not vest in the government, until formally claimed or taken possession of. 1 *Story's R.* 109. See *Confiscate*.

**FORFEITURE.** [L. Fr. *forfaicture*, from *forfaire*; L. Lat. *forisfactura*, *forfactura*.] The loss of what belongs to one, by some fault, misconduct or transgression of law. An involuntary or compulsory transfer or surrender, consequent upon one's own unlawful or wrongful act.\* See *To Forfeit*. Of this the following are the principal varieties.

The loss of land, or an estate in land, by one individual to another, as a punishment for some illegal act or negligence in relation to it; as for some alienation contrary to law, or the breach of some condition. 2 *Bl. Com.* 267, 274, 284. 1 *Steph. Com.* 421. 4 *Kent's Com.* 123. 2 *Crabb's Real Prop.* 89, § 1061, (Am. ed. note.)

The loss of land by a tenant to his lord, as the consequence of some breach of fidelity. 1 *Steph. Com.* 166.

The loss of goods or chattels, as a punishment for some crime or misdemeanour in the party forfeiting, and as a compensation for the offence and injury committed against him to whom they are forfeited. 2 *Bl. Com.* 420.

The loss of lands and goods to the state, as the consequence of crime. 4 *Bl. Com.* 381, 387. 4 *Steph. Com.* 447, 452. 2 *Kent's Com.* 385. 4 *Id.* 426.

The loss of a certain sum of money as the consequence of violating the provisions of some statute, or refusal to comply with some requirement of law.

The loss of office, by abuser, non user, or refusal to exercise it. 1 *Crabb's Real Prop.* 456, § 576, *et seq.*

The loss of life, as the consequence of the commission of some capital crime.

For the American law of forfeiture in general, see the statutes of the several states, and of the United States, and see *U. S. Digest and Supplement*, Forfeiture.

**FORFEITURE.** A thing or sum of money forfeited. The word in this sense is frequently associated with the word penalty. 2 *N. Y. Rev. St.* [480], 394.

**FORGABULUM.** L. Lat. In old records. Forgavel; a quit rent. *Cowell.* See *Forgavel*.

**FORGAVEL.** Sax. [from *fore*, before, and *gafel*, rent.] In old English law. A small reserved rent in money; a quit rent. *Cowell*, voc. *Forgabulum*.

**FORGE.** [L. Fr. *fauzer*, *fauser*, *faucher*; L. Lat. *falsare*, *fabricare*.] In criminal law. To make or fabricate a thing in imitation of another, with a view to deceive and defraud; to make falsely; to counterfeit.\* To forge (a metaphorical expression, borrowed from the occupation of the smith,) means, properly speaking, no more than to *make* or *form*, but in our law it is always taken in an evil sense. 2 *East's P. C.* 852, c. 19, § 1. The French *fauzer* or *fauser*, however (from *faux*, false,) which is the term employed by Britton, always radically imported a *false* making, and may have been the origin of the English word, instead of *forger*, to fashion, (q. v.)

To *forge* and to *counterfeit* are constantly used both in ancient and modern law, as synonymous terms. Thus, *de fauseours qui ont nostre monoy countrefait*; of forgers who have counterfeited our money. *Britt.* c. 4. See *Forgery*. The former, however, is usually applied to *writing* or written instruments, the latter to other subjects of imitation, especially money. Thus, we say a *forged* deed, a *forged* check, a *forged* signature, a *forged* endorsement; and a *counterfeit* coin, a *counterfeit* bank note.

**FORGER.** L. Fr. To frame or fashion;

to contrive; to fabricate or forge. *L. Fr. Dict. Kelham.* This word is commonly supposed to be the origin of the English *forge*, (q. v.)

**FORGERY.** [*L. Fr. fausinerie*; *Lat. crimen falsi.*] In criminal law. The fraudulent making or alteration of a writing, to the prejudice of another's right. 4 *Bl. Com.* 247.—A false making, [which includes every alteration of, or addition to a true instrument:] a making, *malo animo*, of any written instrument, for the purpose of fraud and deceit. 2 *East's P. C.* 852, c. 19, § 1. Mr. East says of this definition, that it results from all the authorities ancient and modern, taken together. *Id. ibid.* See 2 *Russell on Crimes*, 318. *Wharton's Am. Crim. Law*, 335.

The making a thing in imitation of another thing, with a view to deceive and defraud; such as the imitation of the signature, stamp, brand or mark of another, the imitation of a seal. But this is more commonly termed *counterfeiting*.

The thing itself, so falsely made, imitated or forged; especially a forged writing. A forged signature is said to be a *forgery*. For the American law of forgery, see 2 *Russell on Crimes*, (Am. ed. 1850,) 318, notes. *U. S. Digest and Supplement, Forgery and Counterfeiting.* *Wharton's Am. Crim. Law*, 319—349. *Lewis' Crim. Law*, 290—332.

**FORGIA.** *L. Lat.* In old records. A forge; a smith's forge. *Cowell.*

**FORHERDA.** *L. Lat.* In old records. A herdland, headland or foreland. *Cowell.*

**FORINSECUS,** *Forinsecum.* *Lat.* [from *foris*, without.] In old English law. Outward; without; external; extrinsic; forinsic; foreign; extraordinary. *Selio forinsecus*; an outside ridge or furrow. *Kennell's Gloss. Cowell.* *Forinsecum servitium*; forinsic, foreign or extraordinary service. *Bract. fol. 36.* See *Foreign service, Forinsic.*

*Forinsecus*; a foreigner. *Fleta*, lib. 2, c. 56. *Forinseci tenentes*; foreign tenants, as distinguished from a lord's own tenants. *Stat. Westm. 2*, c. 46.

**FORINSIC.** [*L. Lat. forinsecus*, q. v.] In old English law. Outward; without; foreign; extraordinary. *Forinsic* service, was the payment of aid, scutage and other extraordinary burdens of military service, and was the opposite of *intrinsic* service. 1 *Reeves' Hist.* 273.

**FORIS.** *Lat.* Abroad; out of doors; on the outside of a place; without; extrinsic.

**FORISBANNITUS.** See *Forbannitus*.

**FORISFACERE,** *Forfacere.* *L. Lat.* [from *foris*, without, and *facere*, to make.] In old English law. To forfeit; to lose what belonged to one by some fault or crime; to make it foreign to one's self, (*sibi extraneum facere.*) *Spelman.* See *To Forfeit.* *Forisfacit patriam et regnum, et exul efficitur*; he forfeits country and kingdom, and is made an exile. *Bract. fol. 128 b.* *Forisfacit amicos*; he forfeits friends. *Id. ibid.* *Forisfacit utlagatus omnia quæ pacis sunt*; the outlaw forfeits all the privileges of a state of peace. *Id. ibid.* *Forisfacit omnia quæ juris sunt*; he forfeits all his lawful rights. *Id. fol. 129.*

To incur a penalty; to confiscate. *Spelman.*

To commit, or be guilty of an offence; to transgress a law; to do an injury. *Spelman.* *LL. Edw. Conf. c. 32*, cited *ibid.*—To do a thing against or without law or custom, (*extra legem seu consuetudinem facere.*) *Co. Litt. 59 a.*

**FORISFACTUM,** *Forfactum.* *L. Lat.* [from *forisfacere*, (q. v.); *L. Fr. forfait, forfait.*] In old English law. Forfeit; forfeited. *Bona forisfacta*; forfeited goods; forfeitures. 1 *Bl. Com.* 299. See *Forfactus*.

A crime. *Si quispiam poposcerit regis misericordiam pro forisfacto suo*, if any one pray the king's mercy for his crime. *LL. Edw. Conf. c. 18.* *Spelman*, voc. *Forisfacere*.

**FORISFACTUS.** *L. Lat.* [from *forisfacere*, q. v.] In old European law. Forfeited. See *Forisfactum*.

One who has forfeited his life, as being found guilty of a capital offence. *De vita forisfactum interficere*; to slay one who had forfeited his life. *LL. Ripuar. tit. 77.* *Spelman*, voc. *Forisfacere*.

**FORISFACTURA,** *Forfactura.* *L. Lat.* [from *forisfacere*, (q. v.); *L. Fr. forfaiture.*] In old English law. Forfeiture; the losing one's property or life, as the consequence of some fault, misconduct or crime. *Spelman*, voc. *Forisfacere.* See *Forfeiture*.

A crime, offence, transgression or injury by which one loses property or life. *LL. Edw. Conf. c. 32.* *Spelman*, ub. sup.

A mulct, fine or pecuniary punishment.

*LL. Edw. Conf.* c. 10. A were or were-gild. *Id.* c. 36. The thing itself, lost or forfeited.\* *Forisfactura plena*; a full forfeiture, (Sax. *fulwite*;) the whole of a penalty without diminution, or the forfeiture of all that a man had. *Spelman, ub. sup. Manwood, c. 9.*

**FORISFAMILIARE.** L. Lat. [from *foris*, without, and *familia*, a family.] In old English and Scotch law. Literally, to put out of a family, (*foris familiam ponere*.) To portion off a son, so that he could have no further claim upon his father. *Glanv. lib. 7, c. 3. Reg. Maj. lib. 2, c. 33, § 8.*

To emancipate, or free from paternal authority. See *Forisfamiliatus*.

**FORISFAMILIATED.** [from *forisfamiliare*, q. v.] In old English law. Portioned off. A son was said to be forisfamiliated, (*forisfamiliari*;) if his father assigned him part of his land, and gave him seisin thereof, and did this at the request, or with the free consent of the son himself, who expressed himself satisfied with such portion. *Glanv. lib. 7, c. 3. Reg. Maj. lib. 2, c. 33, § 8. 1 Reeves' Hist. Eng. Law, 42, 110. See Forisfamiliare.*

**FORISFAMILIATUS.** L. Lat. [from *forisfamiliare*, q. v.] In old English law. Put out of a family; portioned off; emancipated, forisfamiliated. *Bract. fol. 64.*

**FORISJUDICARE.** L. Lat. [from *foris*, without, and *judicare*, to judge.] In old English law. To deprive or put out of a thing by the judgment of a court; to forejudge. *In predicta curia nostra forisjudicatur de custodia illa*; in our said court he is forejudged of that wardship. *Bract. fol. 256 b.*

**FORISJUDICATIO.** L. Lat. [from *forisjudicare*, q. v.] In old English law. Forejudgment; forejudger. *Co. Litt. 100 b. Towns. Pl. 116. Called by Fleta abjudicatio, (q. v.)*

**FORISJUDICATUS.** L. Lat. [from *forisjudicare*, q. v.] In old English law. Deprived or put out of a thing by the judgment of a court; forejudged. *Co. Litt. 100 b. Forisjudicatus est de eadem custodia. Bract. fol. 256 b. The same as abjudicatus. Id. ibid.*

**FORISJURARE.** L. Lat. [from *foris*, out, and *jurare*, to swear.] In old English law. To forswear; to renounce or relin-

quish by or under oath, (*rem negative dejerare*;) to abjure. *Spelman. Provinciam forisjuraret*; he shall forswear the county; that is, he shall swear that he will not return. *LL. Edw. Conf. c. 6. Crabb's Hist. Eng. Law, 43, ch. 4.* This, when applied to the kingdom, was afterwards called *abjuring the realm. Id. ibid.*

**FORISTEL.** The same as *Forestal*, *Forstal*, and *Forestall*. Used in Domesday Book. *Spelman, voc. Forstall.*

**FORJUDGER.** See *Forejudger*.

**FORJUDGMENT.** See *Abjudicatio, Forisjudicatio*.

**FORJUDICARE, Forisjudicare.** L. Lat. (from *foris*, without, and *judicare*, to judge; L. Fr. *forjuger*.) In old European law. To deprive or put out of a thing by the judgment of a court. *Spelman. See Forisjudicare.*

To expel, or put out of court; (*forisjudicium ponere*.) See *Forejudge*.

To expel or banish; to proclaim one an outlaw. *Forjudicari bannitus debet per justitiarium, qui bannitionis et forjudicationis penam edixit. Const. Sic. lib. 2, tit. 3. Spelman.*

**FORJUDICATUS.** L. Lat. [from *forjudicare*, q. v.] In old European law. Proscribed; outlawed; denied all access to the courts, (*foris omnem aditum judicii constitutus*.) *Spelman, voc. Forjudicare. Const. Neap. Fred. Imp. lib. 2, tit. 3.*

**FORJUGER.** L. Fr. In old English law. To forjudge, or expel. *Il perde soun office, et soit forjugge la court*; he shall lose his office, and be forjudged the court. *Stat. 2 Hen. IV. c. 8.*

To deprive of; to condemn to lose. *Forjuges de fraunche ley*: forjudged of their frank-law. *Britt. c. 52.*

**FORJURER.** L. Fr. In old English law. To forswear; to abjure. *Forjurer royalme*; to abjure the realm. *Britt. c. 1, 16. Stat. Westm. 1, c. 15, 20.*

**FORLANDUM, Forlanda.** L. Lat. In old records. Land extending beyond, or lying before other land; a foreland. *De forlando quod jacet ante terram ecclesie. 2 Mon. Angl. fol. 332. Blount.*

Land bordering or lying outward. *Cowell.* An extra allowance of land; an allowance in meting and bounding, otherwise called *freebord. Id.*

**FORMA.** Lat. [L. Fr. *forme, fourme*.] Form; the prescribed form of judicial proceedings. *Forma et figura iudicii*; the form and shape of judgment or judicial action. 3 *Bl. Com.* 271.

A form prescribed by statute. According to Lord Coke, there are two manner of forms, *forma verbalis*, (verbal form) and *forma legalis*, (legal form.) *Forma verbalis* stands upon the letters and syllables of the act; *forma legalis* stands upon the substance of the thing to be done, and upon the sense of the statute. 10 *Co.* 100 a.

**Forma legalis forma essentialis.** Legal form is essential form. 10 *Co.* 100.

**Forma non observata, infertur annullatio actus.** Where form is not observed, a nullity of the act is inferred. 12 *Co.* 7. Where the law prescribes a form, the non-observance of it is fatal to the proceeding, and the whole becomes a nullity. *Best on Evid.* Intro. § 59.

**FORMA PAUPERIS.** See *In forma pauperis*.

**FORMATA.** L. Lat. In canon law. Canonical letters. *Spelman*.

**FORMATA BREVIA.** L. Lat. Formed writs; writs of form. See *Brevia formata*.

**FORME, Fourme.** L. Fr. Form. *Forme de don*; the form of the gift. *Britt.* c. 119. *Fourme de don.* *Id. ibid.*

**FORMEDON, Formdon.** L. Fr. [contracted from *forme de don*; L. Lat. *forma donationis*; the form of the gift.] In old English practice. An action, in the nature of a writ of right, given by the statute Westm. 2, (13 Edw. I.) c. 1, as the peculiar remedy of a tenant in tail, in case of a discontinuance of the estate tail; and therefore called his writ of right. 3 *Bl. Com.* 191. Called *formedon* because the writ comprehended the *form of the gift*. *Co.* Litt. 326 b. It was of three kinds, in the *descender*, in the *remainder*, and in the *reverter*. See *infra*.

Writs of *formedon* were specific remedies to carry into effect the statute *de donis*, which provided *quod voluntas donatoris, secundum formam in charta doni sui manifeste expressam, de cætero observetur*; that the will of the donor, according to the form clearly expressed in the charter of his gift, shall in future be observed; [their object, in other words, being to enforce the gift in tail according to its form.] 2 *Reeves' Hist. Eng. Law*, 320. 3 *Id.* 41.

They were recently abolished in England, with other real actions, by statute 3 & 4 Will. IV. c. 27, § 36. 3 *Steph. Com.* 489, note.

**FORMEDON IN THE DESCENDER.** [L. Fr. *formedon en le descender*; L. Lat. *forma donationis in le descendere*.] A writ of *formedon* which lay where a gift in tail was made, and the tenant in tail aliened the lands entailed, or was disseised of them, and died; in this case the heir in tail was entitled to this writ, to recover these lands so given in tail, against him who was the actual tenant of the freehold. 3 *Bl. Com.* 192. *F. N. B.* 211 L. 212. *Roscoe's Real Act.* 43, 54. *Litt.* sect. 595. *Reg. Orig.* 238 b. The form in the Register recites that the premises claimed ought to *descend* to the demandant *per formam donationis*, (by the form of the gift.) *Reg. Orig.* *ub. sup.*

**FORMEDON IN THE REMAINDER.** [L. Fr. *formedon en le remainder*; L. Lat. *forma donationis in le remanere*.] A writ of *formedon* which lay where a man gave lands to another for life or in tail, with remainder to a third person in tail or in fee, and he who had the particular estate died without issue inheritable, and a stranger intruded upon him in remainder, and kept him out of possession. In this case he in remainder, or his heir, was entitled to this writ. 3 *Bl. Com.* 192. *F. N. B.* 217. *Roscoe's Real Act.* 57. *Reg. Orig.* 243. *Litt.* sect. 597.

**FORMEDON IN THE REVERTER.** [L. Fr. *formedon en le reverter*; L. Lat. *forma donationis en le reverti*.] A writ of *formedon* which lay where there was a gift in tail, and afterwards, by the death of the donee, or his heirs without issue of his body, the reversion fell in upon the donor, his heirs, or assigns; in such case the *reversioner* had this writ to recover the lands. 3 *Bl. Com.* 192. *F. N. B.* 219 E. *Roscoe's Real Actions*, 59. *Reg. Orig.* 242. *Litt.* sect. 596.

**FORMELLA.** L. Lat. In old English law. A weight of lead, described in the statute of weights and measures, 51 Hen. III., as containing six stone, all but two pounds. *Spelman*. *Cowell*.

**FORMULA.** Lat. [dimin. of *forma*, a form.] In practice. A form of words used in judicial proceedings, generally written, always consisting of the same parts, and expressed in precisely the same lan-

guage, except where variation is necessary to accommodate it to a particular case. The writs, pleadings and records of the common law system of practice furnish the best examples of written formulæ.

In the civil law. An action. *Calv. Lex.*

**FORMULARIES.** [L. Lat. *formularia*, from *forma*, a form.] Collections of *formulæ*, or forms of forensic proceedings and instruments used among the Franks, and other early continental nations of Europe. Of these the formulary of Marculphus is the most curious. *Buller's Co. Litt.* Note 77, lib. 3.

**FORNAGIUM.** See *Furnagium*.

**FORPRISA, Forprisum.** L. Lat. Forprise, (q. v.)

**FORPRIS.** L. Fr. Except. *Britt.* c. 5, 34.

**FORPRISE, Foreprise, Forsprise.** L. Fr. & Eng. [from Fr. *for*, out, and *prise*, a taking; L. Lat. *forprisa, forprisum*.] In old English law. An exception, or taking out; a reservation; excepted, reserved; excepting. A term formerly used in conveyances and leases, in which "*excepted and foreprised*" was an usual expression. *Cowell. Blount. Old deed, ibid.* See *Forsprise*. Written *horsprise* in the *Stat. Exon.* 14 Edw. I.: a form not explained by either Spelman, Cowell or Blount, but readily accounted for by the circumstance of *f* and *h* being convertible letters. See *Hors*.

**FORS.** L. Fr. [from Lat. *foris*.] Out. *Kelham*.

**FORS, Force.** L. Fr. Force. *Amy's coiller et fors*; to collect friends and force. *Britt.* c. 44.

**FORSCHET.** [from Sax. *for*, before, and *sceat*, a part or portion; L. Lat. *forscheta*.] In old records. The outer or forepart of a furlong; the skirt, or slip, or small piece that lay next the highway. *Kennett's Par. Ant.* 531, 535. *Cowell*.

**FORSPEAKER.** An attorney or advocate in a cause. *Blount. Whishaw*.

**FORSPRISE, Forspris.** L. Fr. Except. *Litt.* sect. 19. *Kelham*.

**FORSQUE, Forke, Furk.** L. Fr. But;

only. *Litt.* sect. 1, 26. *Britt.* c. 26. *Kelham*.

**FORSTAL, Forestal, Forstall;** in Domesday, *Foristel, Faristel*. Sax. [from *fore*, before, or *fare*, a way, and *stal*, or *stæl*, a standing; L. Lat. *forstallatio, forstallamentum*.] In old English law. A standing before, or stopping; a stopping of the way, (*viæ obstructio*;) a stopping or intercepting on the road; forstalment, forestaller, or forestalling, (qq. v.) The stopping of a deer broken out of the forest, from returning home again, or lying between him and the forest, in the way he was to return. *Crompt. Jur.* fol. 153. (*Impedimentum transitus et fugæ averiorum*.) *Fleta*, lib. 1, c. 42, 47. The stopping or assaulting of a person on the highway. *Plac. Parl.* 18 Edw. I. The stopping of merchandise on its way to market. See *Forestalling*.

**FORSTALER.** L. Fr. To stop; to obstruct; to forestall. *Litt.* sect. 240.

**FORSTALL.** See *Forstal, Forestall*.

**FORSTALLARE.** L. Lat. In old English law. To stop a way; to stop on the way; to forestall. *Spelman*.

*Forstallarius*; (in Domesday, *Foristellarius*.) A forestaller. *Stat.* 13 Edw. I. *Reg. Orig.* 271 b. *Spelman*, voc. *Forstallator*.

*Forstallator, Forstellator.* A forestaller. *Spelman. Reg. Orig.* 279 b.

*Forstallamentum.* A forestalment, or forestalling. *Reg. Orig.* 271 b.

*Forstallatio.* A forestalling.

**FORSTALLER, Forstallour.** L. Fr. A forestaller. *Britt.* c. 20, 30.

**FORSTALMENT.** [L. Lat. *forstallamentum*.] An obstruction or stopping of a way; (*obstructio viæ, impedimentum transitus*.) *Co. Litt.* 161 b. *Fleta*, lib. 1, c. 42.

**FORSWEAR.** [L. Lat. *forisjurare*.] To abjure, or renounce by oath. See *Forisjurare*.

To swear falsely. But the word, in this sense, does not in itself import perjury. *Tompkins, J., 2 Johns. R.* 10, 11. *Cro. Jac.* 190, 436.

**FORTESCUE.** The author of a celebrated treatise on English law, written in Latin, in the reign of Henry VI., under the title of *De Laudibus Legum Angliæ*. Sir John Fortescue, who had been some time

Chief Justice of the King's Bench, is said to have written this work while enduring an exile with the Prince of Wales, and others of the Lancastrian party in France. Sir John was then made chancellor, and in that character he supposes himself holding a conversation with the young prince, on the nature and excellence of the laws of England, compared with the civil law, and the laws of other countries. 4 *Reeves' Hist. Eng. Law*, 112, 113. *Crabb's Hist.* 424, (Am.ed.) 1 *Kent's Com.* 501, 502.

**FORTHCOMING**, *process or decree of*. In Scotch law. A decree and process following the process of arrestment, by which the creditor is entitled to demand the sum arrested to be applied for payment of the debt upon which the arrest and forthcoming proceeded. 2 *Kames' Equity*, 177, 178. See *Arrestment*.

**FORTHWITH**. In practice. A term sometimes used in rules and other proceedings; which, according to Mr. Chitty, seems to import that the requisite act shall be performed as soon as, by reasonable exertion confined to that object, it might be; and which must consequently vary according to the circumstances of each particular case. 3 *Chitt. Gen. Pr.* 112.

**FORTIA**, *Forcia*. L. Lat. In old European law. Force, usually of an unlawful character; (*vis plerumque injusta*.) *Spelman*. The word occurs in this sense in the laws of the Bavarians, and Ripuarians. *L. Boior.* tit. 2, c. 10, § 1. *L. Ripuar.* tit. 11, § 3, cited *ibid*.

In old English law. Force used by an accessory, to enable the principal to commit a crime, as by binding or holding a person while another killed him, or by aiding or counselling in any way, or commanding the act to be done. *Bract.* fol. 138, 138 b. Thus one might be appealed, that is accused, of the force, (*oppellatus de fortia*), and another of the fact, or act, (*appellatus de facto*.) *Id.* fol. 127 b, 128, 138 b, 139. *Ubi factum, ibi poterit esse forcia quandoque, sed nunquam forcia sine facto.* *Id.* fol. 128. According to Lord Coke, *fortia* was a word of art, and properly signified the furnishing of a weapon of force to do the fact, and by force whereof the fact was committed, and he that furnished it was not present when the fact was done. 2 *Inst.* 182.

**FORTIA FRISCA**. L. Lat. In old English law. Fresh force. See *Fresh force*.

**FORTIOR**. See *Fortis*.

**FORTIS**. Lat. Strong. *Fortis et sana*; strong and sound; staunch and strong; as a vessel. *Towns. Pl.* 227.

Powerful or effective; of weight, force or effect.

**Fortior**. Stronger, more effectual. *Fortior et potentior est dispositio legis quam hominis*. The disposition of the law is of greater force and effect than that of man. *Co. Litt.* 234 a. *Shep. Touch.* 302. 15 *East's R.* 178. The law in some cases overrides the will of the individual, and renders ineffective or futile his expressed intention or contract. *Broom's Max.* 309.

**Fortissimum**. Strongest; of the greatest force, or weight. *Argumentum ab auctoritate est fortissimum in lege*. The argument from authority is of the greatest force in law. *Co. Litt.* 254 a.

**FORTUIT**. Fr. [from Lat. *fortuitus*, q. v.] Accidental. See *Cas fortuit*.

**FORTUITOUS**. [from Lat. *fortuitus*, q. v.] Accidental.

**FORTUITOUS COLLISION**. [Fr. *abordage fortuit*.] In maritime law. The accidental running foul of vessels. 14 *Peters' R.* 112.

**FORTUITUS**. Lat. [from *fors*, chance.] In the civil law. Accidental. *Fortuitus casus*; a fortuitous event; an accident. *Inst.* 3. 15. 2.

**FORTUNA**. Lat. Fortune; chance. *Fortunam faciant judicem, ut quilibet habeat partem illam quæ per sortem ei acciderit*. They shall make fortune or chance the judge, that each one may have that part which shall fall to him by lot. *Bract.* fol. 75 b.

**FORUM**. L. Lat. A court, or judicial tribunal; a place of jurisdiction; a place where a remedy is sought; a place of litigation. *Story, J.*, 3 *Story's R.* 347. So called from the Roman *forum*, where the courts were held. *Lex fori*; the law of the place where a remedy is sought, or action instituted. 2 *Kent's Com.* 462, 463, and notes. See 3 *Bl. Com.* 436. *Story's Conf. of Laws*, § 325 h, 325 k. *Story, J.*, 2 *Gallison's R.* 440.

**FORUM CONSCIENTIÆ**. L. Lat. The forum or tribunal of conscience. See *In foro conscientie*.

**FORUM CONTENTIOSUM**. L. Lat. A contentious forum or court; a place of



litigation; the ordinary court of justice, as distinguished from the tribunal of conscience. 3 *Bl. Com.* 211.

**FORUM CONTRACTUS.** L. Lat. The forum of the contract; the court of the place where a contract is made; the place where a contract is made, considered as a place of jurisdiction. 2 *Kent's Com.* 463.

**FORUM DOMICILII.** L. Lat. The forum or court of the domicile; the domicile of a defendant, considered as a place of jurisdiction. 2 *Kent's Com.* 463.

**FORUM ECCLESIASTICUM.** L. Lat. An ecclesiastical or spiritual court, as distinguished from a secular one. *Si de testamento oriatur contentio, in foro ecclesiastico debet placitum terminari.* If a contest arise about a will, the plea or suit should be determined in an ecclesiastical court. *Bract.* fol. 61. *Artic. Cleri*, c. 6. Called also *judicium ecclesiasticum.* *Bract.* fol. 175, 401.

**FORUM ORIGINIS.** L. Lat. The forum or court of nativity; the domicile of nativity, or place of a person's birth, considered as a place of jurisdiction. 5 *Vesey, Jr.* 750, 760. 2 *Kent's Com.* 430, 431, note.

**FORUM REGIUM.** L. Lat. The king's court. *Stat. Westm.* 2, c. 43.

**FORUM REI, or REI SITÆ.** L. Lat. The forum or court of the thing, [*res, rei* ;] the court of the place where a thing claimed is; the tribunal where the property is. *Story's Conflict of Laws*, § 325 k. The place where a thing in controversy is situated, considered as a place of jurisdiction and remedy. 2 *Kent's Com.* 463.

**FORUM REI GESTÆ.** L. Lat. The forum or court of a *res gesta*, (thing done;) the place where an act is done, considered as a place of jurisdiction and remedy. 2 *Kent's Com.* 463.

**FORUM REI.** L. Lat. The forum or court of the defendant, [*reus, rei* ;] the court of the place where the defendant is, or resides. *Bract.* fol. 401. The same with *forum domicilii*, (q. v.) See *Aeter sequitur forum rei.*—*Forum sequitur reum.* The court follows the defendant. 2 *Salk.* 549. In transitory cases a party may be sued anywhere.

**FORUM SÆCULARE.** L. Lat. The

secular forum or court, as distinguished from the spiritual or ecclesiastical. *Videtur prima facie quod cognitio super catallis et debitis pertineat ad forum sæculare.* It seems *prima facie*, that jurisdiction over chattels and debts should belong to the secular court. *Bract.* fol. 175. Called also *forum laicale.* *Id. ibid.* *Id.* fol. 401.

**FORURTH.** In old records. A long slip of ground. *Cowell.*

**FOS.** *stag. sepe. que vi. diversi cursus aquarum, Poscunt assisam; mercatum, feria, bancum.*

A Latin couplet, artificially constructed of words and parts of words, anciently used as an aid to the memory, to show in what courts certain kinds of disseisin by nuisance were cognizable. By writing the abbreviated words at length, the following sentence is produced: *Fossatum, stagnum, sepesque, via, diversi cursus aquarum, poscunt assisam; mercatum, feria, bancum.* In literal English,—ditch, pool, hedge, way, diverted water courses, require the assise; market and fair, the bench: that is, disseisins by digging a ditch, raising or lowering a pond, building or throwing down a hedge, obstructing or narrowing a road, and diverting a water course, must be determined before the justices of assise; disseisins of a market and fair, before the bench, (that is the court of common bench, or common pleas.) *Reg. Orig.* 199, *nota.*

**FOSSA.** Lat. In old English law. A ditch. See *Fossatum.*

A pit full of water, in which women committing felony were drowned. See *Furca.*  
A grave or sepulchre. *Spelman.*

**FOSSATUM.** L. Lat. [from *fossa*, q. v.] In old English law. A dyke; a bank of earth thrown up out of a ditch. *Glanv.* lib. 13, c. 34. *Bract.* fol. 115. *Stat. Westm.* 2, c. 46.

A ditch or trench. The same with *fossa.* *Spelman.* *Reg. Orig.* 92 b, 198 b, 199.

A moat or fosse around an encampment or fortified place. *Spelman.*

A canal or cut from a river. *Cowell.* *Cart.* 20 *Hen.* III. cited *ibid.*

A place fenced with a ditch. *Cowell.*

**FOSSATORUM OPERATIO.** L. Lat. In old English law. Fosse-work; or the service of laboring, done by inhabitants and adjoining tenants, for the repair and maintenance of the *ditches* round a city or town, for which some paid a contribution, called *fossagium.* *Cowell.* *Kennett's Glossary*, cited *ibid.*

**FOSSE.** L. Fr. A dyke or ditch. *Britt.* c. 20.

**FOSSELLUM.** L. Lat. [from *fossa*, q. v.] In old records. A small ditch. *Cowell.*

**FOSSE WAY, or FOSSE.** One of the four ancient Roman Ways through England. *Spelman.* *Id.* voc. *Ikenild Street.*

**FOSTERLAND.** Land given, assigned or allotted to the finding of food or victuals for any person or persons; as in monasteries for the monks, &c. *Cowell.* *Blount.*

**FOUNDER.** [L. Lat. *fundator*.] One who endows a corporation, or gives the revenues or funds for its establishment.\* 1 *Bl. Com.* 481. 2 *Kent's Com.* 303.

One who gives a corporation its existence by incorporating it.\* In England, the king is the general founder of all colleges and hospitals. 1 *Bl. Com.* 481. See *Fundator*.

**FOUNDEROSA.** L. Lat. Founde-rous; out of repair, as a road. *Cro. Car.* 366.

**FOUNT.** L. Fr. [from *faire*, q. v.] (They) do or did; (they) make. *L. Fr. Dict.*

**FOUR CORNERS.** To look at the *four corners* of an instrument is to examine the whole of it, so as to construe it as a whole, without reference to any one part more than another. 2 *Smith's Lead. Cas.* 295.

**FOUR SEAS.** [L. Fr. *quater meres*; Lat. *quatuor maria*.] In English law. A term applied to the seas formerly considered as encompassing either the whole island of Great Britain, or England only. According to Selden, the four seas surrounding the whole island of Great Britain were, 1. the Western, called *Vergivian*, including the Irish and Scottish seas: 2. the Northern, the *Scottish* or North sea: 3. the Eastern, the *German Ocean*: and 4. the Southern, or *British Channel*. *Seld. Mare Claus.* lib. 2, c. 1. But the extent of these seas has not been precisely limited. As to the four seas which encompassed England only, see *Meadows' Obs. on the Dominion of the Seas*, 11. *Seld. Mar. Claus.* lib. 2, c. 31. *Hargr. Co. Litt.* Note 115, lib. 2. Britton mentions three seas; the sea of France, of Ireland and of Scotland, (*la meer de Fraunce, de Irland ou de Escoce*.) *Britt.* c. 123. The term *four seas* is used in the books as a term of territorial limitation. Thus, a fine was said to bar all persons of full age,

out of prison and of good memory, within the *four seas* the day it was levied. 4 *Co.* 125. Within the *four seas* is as much as to say, within the jurisdiction of the king of England. 2 *Inst.* 253.

**FOURCHER, Forcher, Foercher.** L. Fr. [from *fourcher*, to divide, or fork.] In old English practice. A term applied to a particular mode of casting essoins by two or more tenants, *simul et vicissim*; that is, alternately, and in succession, so as to prolong the proceedings, and thereby delay the demandant. For this purpose, when a *præcipe* was brought against A. and B., A. was essoined and B. appeared, and had *idem dies* (the same day) given him; at which day A. appeared, but B. cast an essoin; at the *dies datus*, A. was essoined again and B. appeared, and so alternately. This was called *fourcher* (that is, to divide,) by essoin, because they divided themselves in delay of the demandant, by essoins and appearances interchangeably. 2 *Reeves' Hist. Eng. Law*, 122. 2 *Inst.* 250. *Termes de la ley*. This practice was abolished by statute Westminster 1, ch. 43.

**FOUS.** L. Fr. Fools. *Fous nâtres*; natural or born fools. *Britt.* c. 10.

**FOVEA.** Lat. A grave. *Cowell.*

**FOWLS OF WARREN.** In English law. Birds of game\*; which are divided by Lord Coke into three kinds: *campestres*, [field birds,] as the partridge, quail, rail, &c.; *silvestres*, [wood birds,] as the pheasant, woodcock, &c.; and *aquatiles*, [water fowl,] as mallard, heron, &c. *Co. Litt.* 233 a. But according to Manwood (who supports his opinion by referring to the Register) there are but two fowls of warren, the pheasant and the partridge. *Manwood, Forest Law*, c. 4, s. 3. *Reg. Orig.* 93 b. 2. *Bl. Com.* 38, note (b). See *Free Warren*.

**FOY, Foi.** L. Fr. Faith; fidelity. *Litt.* sect. 85. *Britt.* c. 29. *En bonne foy*; in good faith. *Kelham.*

Oath. *Par sa mayne et par sa foy*; by his hand and by his faith. *Britt.* c. 70.

**FOYABLE.** L. Fr. Faithful. *Kelham.*

**FOYAL, Foial.** L. Fr. Faithful. *Litt.* sect. 85.

**FRA.** L. Fr. [from *faire*, q. v.]

Shall do or make. *Et que le fra*; and whoever shall do so. *Stat. Westm.* 1, c. 26. *Frons nostre breve*; we will make our writ. *Britt.* c. 45.

**FRACTION OF A DAY.** The division or breaking up (Lat. *fractio*, from *frangere*, to break,) of a day into smaller portions of time.\* In general, the law does not allow of the fraction of a day, or, as it is otherwise expressed, the law rejects all fractions of a day, in order to avoid disputes. 2 *Bl. Com.* 141. *Co. Litt.* 135 b. 9 *East*, 151, 154. Therefore where an act is to be done, as money to be paid on a certain day, it is sufficient if it be paid at any time during the day, that is, before twelve o'clock at night. 2 *Bl. Com.* 141. The law, however, does admit of the fraction of a day in certain cases, where it is necessary to distinguish for the purposes of justice, [as where two acts are done on the same day, and it is important to show which was actually done first;] and according to Lord Mansfield, an hour may admit of a similar division, where it is necessary, and can be done, for it is not like a mathematical point which cannot be divided. 3 *Burr.* 1434. See 4 *Kent's Com.* 95, note.

**FRACTURA NAVIUM.** Lat. The breaking, or wreck of ships; the same as *naufragium*, (q. v.) See *Shipwreck*.

**FRANC.** L. Fr. Free. See *Frank*, *Fraunc*, *Fraunche*.

**FRANC ALEU, or ALLEU.** Fr. In French law. Allodial land; an estate entirely free, and not holden of any superior, and wholly exempt from all seigniorial rights and services. *Argou Inst. au Droit Francais*, tom. i. 194; cited 3 *Kent's Com.* 498, note. *Hargr. Co. Litt.* Note 3, lib. 2. A term used in Lower Canada to denote an absolute right to real estate, as distinguished from a tenure. *Brande*. In old French law, it is simply called *aleu*, or *alleu*. *Esprit des Loix*, liv. 31, c. 8. See *Alleu*.

**FRANCHIARE.** L. Lat. In old English law. To enfranchise; to make free. *Liber fuit quia franchiatus est*; he was free because he was enfranchised. *Bract.* fol. 277 b.

**FRANCHILANUS.** L. Lat. [from Fr. *franche* or *frank*, free.] In old English law. A freeman. *Sciatis me dedisse — cum villanis et franchilano, nomine Ha-*

*mone*, &c.: Know ye that I have given— with the villeins and the freeman, named Hamon, &c. *Blount.* 1 *Mon. Angl.* fol. 442 b. *Carta Hen.* IV. cited *ibid*.

A freeholder or free tenant; a franc-laine, frankleyne or frankleyn. *Spelman*, *Reliq.* 167. *Fortescue de L. L. Angliæ*, c. 20, note (m).

**FRANCHISE.** L. Fr. & Eng. [L. Fr. *fraunchise*, from *fraunch*, free; L. Lat. *franchesia*, *francisia*.] In English law. A liberty; a privileged place, (*locus immunis*.) *Spelman*. *Pur encheson des franchises ou les felons sont resceves*; by reason of the liberties where the felons are harbored. *Stat. Westm.* 1, c. 9. An immunity or exemption from ordinary jurisdiction. *Termes de la ley*. *Blount*. See *Liberty*.

A royal privilege, or a branch of the prerogative subsisting in the hands of a subject, and arising either from royal grant, or from prescription, which presupposes a grant; or species of incorporeal hereditament. 2 *Bl. Com.* 37. 2 *Steph. Com.* 14. Such as the privileges to be a county palatine; to be a corporation; to have a bailiwick or liberty exempt from the sheriff of the county; to hold a court leet; to have waifs, wrecks, estrays, treasure trove, royal fish, forfeitures and deodands; to have a fair or market, or ferry, or the like, with the right of taking toll there; or to have a forest, chase, park, warren or fishery. 2 *Steph. Com.* 14, 15. 1 *Crabb's Real Prop.* 483—541, §§ 623—697.

In American law. A particular privilege conferred by grant from government and vested in individuals. 3 *Kent's Com.* 458. As, to be a corporation; to have a ferry, bridge, turnpike or rail-road. *Id.* 458, 459, and notes. Corporations are the most usual franchises known in our law. *Id.* 459. See 2 *Hilliard's Real Prop.* 45—74.

*Franchise* is a slight variation from the law French *franchise* used in Britton. *Frankise* is a corrupted form given by Kellham, which indicates the old pronunciation of the word.

**FRANCIA.** L. Lat. France. *Bract.* fol. 427 b.

**FRANCIGENA.** L. Lat. [from *Fran-* cus, French, and *genitus*, born.] In old English law. A Frenchman; one born in France. *Sunt aliqui Francigenæ in Francia, qui sunt ad fidem utriusque [regis]*: there are some Frenchmen born in France, who owe allegiance to both kings. *Bract.* fol. 427 b.

Any alien, as distinguished from an Englishman. *Utrum sit Anglicus, vel Francigena. Bract. fol. 135 b.*

FRANCISIA. L. Lat. A franchise. *Spelman.*

FRANCLAINE, *Franclein, Frankleyne.* L. Fr. & O. Eng. [L. Lat. *franchilanus.*] In old English law. A freeholder, free-man or gentleman, (*libertus, libertinus, municeps*;) the opposite of a villein. *Fortescue de L. L. Anglia, c. 29, note (m). Dufresne, voc. Franchilanus.*

FRANCLING, *Franclin.* [L. Fr. *franclein*; L. Lat. *franchilanus.*] In old English law. A freeman, (*libertus*;) a freeholder, or free tenant, (*qui libere tenet.*) *Spelman.*

FRANCUS. L. Lat. [from L. Fr. *franc.*] In old European law. Free. See *infra.*

A freeman, (*liber.*) *Spelman.* A powerful man, (*un homme puissant*;) as distinguished from *debilior persona*, in the capitularies of the French kings. *Esprit des Lois, liv. 30, c. 25.*

A Frank. *Spelman.*

A Frenchman. *Omnibus hominibus suis, Francis et Anglis*; to all his subjects, French and English. A common expression in charters of the Anglo-Norman kings.

FRANCUS BANCUS. L. Lat. [L. Fr. *frank bank.*] In old English law. Free bench. *Consuetudo est in partibus illis quod uxores maritorum defunctorum habeant francum bancum suum de terris sockmannorum. Bract. fol. 309. See Free Bench.*

FRANCUS HOMO. L. Lat. In old European law. A free man. *Domesday. Apud duodecim homines bene francos Salicos*; before twelve good free Salic men. *Spelman. Form. Solenn. c. 168, cited ibid.*

FRANCUS PLEGIUS. L. Lat. In old English law. A frank pledge, or free pledge. *Spelman, voc. Francus. See Frank pledge.*

A decennary or friborg, (properly *francum plegium.*) *Alium recipere in franco plegio,—illum a franco plegio dimittere*, to receive another in a frank pledge,—to send him out of a frank pledge. *Bract, fol. 124 b,*

FRANCUS TENENS. L. Lat. In old English law. A frank or free tenant; a freeholder; (*libere tenens.*) *Spelman, voc. Francus.* One who freely holds lands or estates of his lord. *Id. Si quis obierit francus tenens, &c*; if any free tenant die &c. *Assis. de Clarendon, cited ibid.*

FRANK, *Franc, Fraunc, Fraunche.* L. Fr. Free. *Et pur ceo que elections doient estre franks, cy defend le roy sur la greeve forfeiture que nul haute home, ne auer, per poyer des armes, ne per malice ou menaces, ne disturbe de faire franks election.* And inasmuch as elections ought to be free, the king commands, under a grievous forfeiture, that no great man, nor other, by force of arms, nor by malice or menaces, shall disturb any to make free election. *Stat. Westm. 1, c. 5.*

FRANKALMOIGN. L. Fr. & Eng. [L. Fr. *fraunche aumone*; L. Lat. *libera eleemosyna.*] In English law. Free alms. A spiritual tenure whereby a religious corporation, aggregate or sole, holds lands of the donor to them and their successors forever. *Litt. sect. 133. 2 Bl. Com. 101. 1 Steph. Com. 213.* This was anciently an ordinary kind of tenure in England, the peculiarity of which was its exemption from all secular or temporal service; the service to be performed being of a religious character, usually to pray for the soul of the donor and his heirs, dead or alive, and even that not certainly defined; hence it was called *frank* or *free*. *Britt. c. 66. 2 Bl. Com. 101, 102.* It is the tenure by which the parochial clergy, and very many ecclesiastical and eleemosynary foundations hold their land at this day; having been expressly reserved by the statute 12 Car. II. c. 24. *Id. 101. See Eleemosyna.*

FRANK BANK. L. Fr. [L. Lat. *francus bancus.*] In old English law. Free bench. *Litt. sect. 166. Co. Litt. 110 b. See Free Bench.*

FRANK CHASE. [L. Lat. *libera chacea.*] In English law. Free chase. The liberty or franchise of having a chase.

FRANK FEE. [L. Lat. *liberum feudum, or feudum.*] In English law. A species of tenure in fee simple, being the opposite of ancient demesne, or copyhold. *Termes de la ley. 2 Bl. Com. 368. 3 Id. 166.* All land that was not ancient demesne was considered as *frank fee*. *Reg. Orig. 14 b. Id. 12. F. N. B. 16 D.* Where a fine was had of copyhold lands,

or lands in ancient demesne, it altered the tenure, and converted them into *frank fee*. 2 *Bl. Com.* 368. 3 *Id.* 166. In feudal law, *feudum francum* was a free fee or fief, for which no service was due. *Cowell. Fachineus & Zasius de Feudis*, cited *ibid.*

**FRANK FERM.** [L. Fr. *fraunk ferme*; L. Lat. *libera firma*.] In English law. Lands in socage tenure, described by Britton as lands and tenements whereof the nature of the fee is changed by feoffment out of chivalry for certain yearly services, and in respect whereof, neither homage, ward, marriage nor relief can be demanded. *Britt.* c. 66. 2 *Bl. Com.* 80.

**FRANK FOLD.** See *Faldage*.

**FRANK LAW.** [L. Fr. *fraunche ley*; L. Lat. *libera lex, lex terræ*.] In old English law. The liberty of being sworn in courts, as a juror or witness; one of the ancient privileges of a freeman, or free and lawful man, (*liber et legalis homo*.) Otherwise called *the law of the land*, (*lex terræ*.) or simply, *law*, (*lex*.)\* The nature of this privilege may be understood from Bracton's description of the consequences of losing it, among which the principal one was that the parties incurred perpetual infamy, so that they were never afterwards to be admitted to oath, because they were not deemed to be *othesworth*, (that is, not worthy of making oath,) nor allowed to give testimony. *Perpetuam infamiam incurrant, et legem terræ amittant, et ita quod nunquam postea ad sacramentum admittantur, quia de cætero non erunt othesworth, nec ad testimonium recipientur.* *Bract.* fol. 292 b. This was one of the punishments of jurors who had been convicted of perjury. *Id. ibid.* See *Amittere liberam legem, Othesworth, Liber et legalis homo, Lawworth*.

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This term has been very generally defined, "the privilege of the law's protection," and "the benefit of the free and common law of the land." *Holthouse. Wharton's Lex.* But that it had a more particular and determinate meaning is clear both from the testimony of the ancient writers, and from the peculiar signification of the word *law*, which, from a very early period, denoted an *oath*, or the taking or making of an *oath*; as in the common expressions *wager of law*, and *making law*. A *lawful man*, (*legalis homo*.) was one who was competent to be sworn as a juror or witness; and the word *lawful* is used in this sense in jury process, to this day.

3 *Bl. Com.* 340, 341, 352. See *Lawworth*.

**FRANKLEYNE.** [L. Lat. *franchilanus*, q. v.] In old English law. A substantial householder; a freeman or gentleman. *Fortescue de L. L. Angliæ*, c. 29, and note (m). In modern spelling, a franklin.

*Franclaine* (q. v.) is another form of this word, used in the note last referred to; where Chaucer's description of the Franklin is given at length. And see *Francling*.

**FRANK MARRIAGE.** [L. Lat. *liberum maritagium*.] In English law. A species of entailed estate now grown out of use, but still capable of subsisting. It is defined to be, where tenements are given by one man to another, together with a wife, who is the daughter or cousin [that is, of the blood] of the donor, in frank marriage. *Litt. sect.* 17. By such gift the donees have the tenements to them and the heirs of their two bodies begotten, that is, they are tenants in special tail. 2 *Bl. Com.* 115. 1 *Steph. Com.* 232. The land itself so given in consideration of marriage (*propter nuptias*.) was called *maritagium*, and it was called *free*, because it was free and quit from all secular service until the third heir inclusive, (*terra sic data quæta sit et libera ab omni seculari servitio—usque ad tertium hæredem*.) *Bract.* fol. 21, 21 b. *Cowell. Blount.*

**FRANK PLEDGE.** [L. Fr. *fraunk plegge*; L. Lat. *francus plegius, francum plegium, franciplegium*.] In English law. A free pledge; a decennary, tithing or friborg; so called because every freeman composing it was a *pledge* or security for the good conduct of the others, for the preservation of the public peace. *Bract.* fol. 124 b. *Crabb's Hist. Eng. Law*, 18.

A free surety; an inhabitant or member of a decennary, or friborg. 1 *Bl. Com.* 114, 115. 1 *Steph. Com.* 114. 4 *Bl. Com.* 252. 2 *Inst.* 73. See *Francus plegius, Friborg*.

**FRANK TENANT.** L. Fr. A freeholder. *Litt. sect.* 91.

**FRANK TENEMENT.** L. Fr. [L. Lat. *liberum tenementum*.] In English law. A free tenement, freeholding or freehold. 2 *Bl. Com.* 61, 62, 104. 1 *Steph. Com.* 217. *Bract.* fol. 207. Used to denote both the tenure and the estate. See *Freehold*.

**FRASSETUM.** L. Lat. In old Eng-

lish law. A wood, or ground that is woody. *Co. Litt.* 4 b. *Shep. Touch.* 95. Blount considers it a corruption of *frazinetum*, a wood where ashes grow.

FRATER. Lat. [Fr. *frere*.] A brother. *Frater consanguineus*; a brother by the father's side. 2 *Bl. Com.* 232.

*Frater uterinus*; a brother by the mother's side; a uterine brother. *Id.*

*Frater nutricius*; a bastard brother. *Blount.*

*Frater fratri uterino non succedet in hereditate paterna.* A brother shall not succeed a uterine brother in the paternal inheritance. 2 *Bl. Com.* 223. *Fortescue de Laudibus LL. Anglia*, c. 5. A maxim of the common law of England, now superseded by the statute 3 & 4 Will. IV. c. 106, § 9.

FRATERIA. L. Lat. [from *frater*, a brother.] In old records. A fraternity, brotherhood, or society of religious persons, who were mutually bound to pray for the good health and life, &c., of their living brethren, and the souls of those that were dead. *Cowell.*

FRAUD. [L. Fr. *fraude*; Lat. *fraus*, *dolus malus*, *dolus*.] Any cunning, deception or artifice, used to circumvent, cheat or deceive another; (*omnem calliditatem, fallaciam, machinationem ad circumvenienendum, fallendum, decipiendum alterum adhibitam*.) *Dig.* 4. 3. 1. 2. *Id.* 2. 14. 7. 9.—Every kind of artifice made use of by one person for the purpose of deceiving another; (*toute espece d'artifice, dont quelque un se sert pour entromper un autre*.) *Pothier Traite des Oblig.* part 1, c. 1, n. 28.

Both these definitions are quoted with approval by Mr. Justice Story, who observes of the former, "This definition is, beyond doubt, sufficiently descriptive of what may be called positive, *actual* fraud, where there is an intention to commit a cheat or deceit upon another to his injury. But it can hardly be said to include the large class of *implied* or constructive frauds which are within the remedial jurisdiction of a court of equity. Fraud, indeed, in the sense of a court of equity, properly includes all acts, omissions and concealments which involve a breach of legal or equitable duty, trust or confidence justly reposed, and are injurious to another, or by which an undue and unconscientious advantage is taken of another." 1 *Story's Equity Jur.* § 187. See 2 *Kent's Com.* 483, note,

The difficulty of giving any precise definition of fraud has been frequently admitted. See observations of Ware, J. 3 *Story's R.* 611, 634. See *Jeremy's Equity Jurisd.* 383, and the opinion of Lord Chancellor Hardwicke, in *Chesterfield v. Janssen*, in which the different species of frauds against which equity will give relief, were classified. 2 *Vesey*, 125. *White's Equity Cases*, 344.

FRAUD IN FACT. Fraud which consists in, or appears from matter of fact as found by a jury; as distinguished from fraud in law, (q. v.) *Actual* or positive fraud, which must be proved; as distinguished from *constructive* fraud, which may be presumed, implied or inferred by law.\* Fraud is sometimes mere *matter of fact*, and sometimes the *conclusion of law* from facts. Lord Mansfield, 2 *Burr.* 937. Fraud in fact seems to answer to that species of *dolus* which the Roman law expressively distinguished as *bad*, (*malus*). See *Dolus malus*.

FRAUD IN LAW. Fraud, in contemplation of law; fraud implied or inferred by law; fraud made out by construction of law, as distinguished from fraud found by a jury from matter of fact; constructive fraud, (q. v.) See 2 *Kent's Com.* 512—532, and notes.

FRAUDARE. Lat. [from *fraus*, q. v.] In the civil law. To deceive, cheat or impose upon; to defraud. *Nemo videtur fraudare eos qui sciunt et consentiunt.* No one seems [is supposed] to deceive those who know and consent. *Dig.* 50. 17. 145. [187.] Where a party has full knowledge of facts, and consents to what another does, he is not considered to have been deceived by him.

FRAUDE. L. Fr. Fraud. *Sauns* fraude faire; without committing fraud. *Britt.* c. 16.

FRAUDS, STATUTE OF. The celebrated statute of 29 Charles II. c. 3, passed A. D. 1677, otherwise called the *Statute of Frauds and Perjuries*; styled by an eminent commentator, "the most comprehensive, salutary and important legislative regulation on record, affecting the security of private rights." 2 *Kent's Com.* 494, note. It is said to have been the joint production of Sir Matthew Hale, Lord Keeper Guilford, and Sir Leoline Jenkins. The chief object of passing this statute was to prevent the facility to *frauds* and

the temptation to *perjury*, held out by the enforcement of obligations depending for their evidence upon the unassisted memory of witnesses. Hence its leading feature is the requirement of some instrument or note in *writing*, signed by the parties to be charged, or their authorized agents, to render contracts, in certain specified cases, valid. See a summary of the provisions of this statute in 2 *Kent's Commentaries*, 494, note. And see *Smith on Contracts*, 32, et seq.

**FRAUDULENT CONVEYANCE.** A conveyance, the object, tendency or effect of which is to defraud another, or the intent of which is to avoid some debt or duty due by, or incumbent on the party making it.\* See 2 *Kent's Com.* 440. 4 *Id.* 462. An immoral and corrupt motive is not essential to render the act fraudulent as to creditors. It is constructively so, if it necessarily leads to the injury of the creditor. 1 *B. Monroe's R.* 157. 2 *Kent's Com.* 441, note.

**FRAUNCHE.** L. Fr. Free. *Fraunche ley*; frank-law. *Britt.* c. 52. *Ascuns franchises, et ascuns enserves*; some free and some bound. *Id.* c. 54.

**FRAUNCHISE.** L. Fr. A franchise; a liberty; a place of exclusive jurisdiction. *Britt.* c. 19.

An exclusive privilege. *Id. ibid.*

Freedom; liberty, as distinguished from bondage. *En faveur de fraunchise*; in favor of liberty. *Id.* c. 49.

**FRAUNK, Fraunck.** L. Fr. Free; frank. *Fraunck estate*; a free estate. *Britt.* c. 31.

*Fraunk home*; a freeman. *Id. ibid.*

*Fraunk ferme*; frank or free farm. *Id.* c. 68.

*Fraunk tenement*; a free tenement; a freehold. *Id.* c. 31.

*Fraunck plegge*; frank pledge. *Id.* c. 20.

**FRAUS.** Lat. Fraud. More commonly called in the civil law, *dolus* and *dolus malus*, (qq. v.) A distinction, however, was sometimes made between *fraus* and *dolus*; the former being held to be of the most extensive import. *Calv. Lex. Jur.* See *Dolus*. Calvin derives *fraus* from *ferre*, (or Gr. *φέρω*) to bear, to bear away or take away; its object usually being to take away another's right or property.

*Fraus est celare fraudem.* It is a fraud

to conceal a fraud. 1 *Vern.* 240. 1 *Story's Eq. Jur.* §§ 389, 390.

*Fraus est odiosa et non presumenda.* Fraud is odious and not to be presumed. *Cro. Car.* 550. But see *Fraud in law*.

*Fraus et dolus nemini patrocinari debent.* Fraud and deceit should defend or excuse no man. 3 *Co.* 78.

*Fraus et jus nunquam cohabitant.* Fraud and justice never dwell together. See *Jus et fraus, &c.*

*Fraus meretur fraudem.* Fraud merits fraud. *Branch's Princ.*

**FRAXINETUM.** L. Lat. [from *fraxinus*, an ash.] In old English law. A wood of ashes; a place where ashes grow. *Co. Litt.* 4 b. *Shep. Touch.* 95.

**FREA.** L. Lat. In old European law. A female ward, (*quæ sub alterius potestate est; pupilla.*) *Spelman. LL. Longob.* lib. 2, tit. 2, l. 4, cited *ibid.*

**FRECTA.** L. Lat. Fretwork. *Cowell.*

**FRECTARE, Fretare.** L. Lat. In old English law. To freight or load a vessel. *Frectatus*; freighted. *Navis frectata seu fretata*; a ship freighted, a laden vessel. *Cowell. Fretati fuerunt cum vinis*; they were freighted with wines. *Id.*

**FRECTUM, Fretum.** L. Lat. In old English law. Freight. *Quoad frectum navium suarum*; as to the freight of his vessels. *Blount. Plac. Parl.* 21 *Edw.* I. cited *ibid.*

**FREDUM, Freda, Fredus.** L. Lat. [from Sax. *fred, fride*, peace.] In old European law. A sum or price paid to the magistrate, as a recompense for the protection which he afforded against the right of revenge. 1 *Robertson's Charles V. Appendix*, Note xxiii. *Esprit des Lois*, liv. 30, c. 20. This was in addition to the composition paid to the injured party, or his relatives as a satisfaction for the injury committed, and it was usually equal to the third part of the composition. *Id. ibid.* See *Composition*. *Spelman* considers it to have been a fine paid for violation of the public peace, (*propter pacem violatam*,) or as the price of obtaining peace, (*ob impe-trandam pacem*; ) but this idea is combated by Dr. Robertson, who follows the opinion of Montesquieu. See *supra*. The *fredum* is supposed by *Spelman* to be the origin of the fines or amercements imposed upon parties to actions under the old English practice.

**FREDWITE**, *Fridwite, Frithwite*. Sax. [from *fred* or *frith*, peace, and *wite*, a fine.] In Saxon law. A sum of money paid to obtain peace, or exemption from prosecution. The same as *fredum*, (q. v.) *Spelman*, voc. *Fredum*.

**FREE**. [Sax. *freo*; Lat. *liber*; L. Lat. *francus*; L. Fr. *fraunc, fraunck, fraunche*.] Not bond or servile; not subject to servitude; as a *freeman*, (q. v.)

Certain or honorable; the opposite of base; as *free service, free socage*, (qq. v.)

Privileged or exclusive; the opposite of common; as a *free chapel, a free fishery, a free warren*, (qq. v.)

—  
The word *free*, as used in the old common law, imported something very different from its prevalent modern meaning. Thus, as applied to *persons*, it had not the sense of absolute *independence* now generally annexed to it; no person, though distinguished as a *freeman*, being exempt from service of some kind or other. See *Liber homo*. So, in its application to *rights*, it had by no means its present popular sense of *common, unrestricted, open to all*, but directly the reverse,—importing either an exclusive right, as in the case of a free fishery and a free warren, (qq. v.) or a special exemption from some general duty or burden, as from a tax, toll, tribute, &c. This very strikingly appears in the use of the word *franchise* itself, which, though properly translated *freedom* or a *freedom*, always denoted, as it still does, either an *exempt* jurisdiction, or an *exclusive* privilege, and it has the latter sense even in American law. So, in English law at this day, a *liberty* is a place of exclusive jurisdiction; a district exempt from the sheriff of the county. 2 *Steph. Com.* 14, 15. This technical meaning, (as it may be called) of the word *free* seems more aptly expressed by the L. Latin *francus*, and L. Fr. *fraunck*, than the pure Latin *liber*.

**FREE BENCH**. [L. Fr. *frank bank*; L. Lat. *francus bancus, liber bancus, libera sedes*.] In English law. Dower in copyhold lands. 2 *Bl. Com.* 129.—That estate in copyhold lands which a wife has after the death of her husband, for her dower, according to custom. *Kitch.* fol. 102. *Termes de la ley*.

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This appears to have been from the earliest period, a customary estate, peculiar to certain lands, and held by the widow on the condition of remaining chaste and unmarried. *Id. ibid.* Bracton cites a case

before Martin [de Pateshull] in the Bench, in the second year of Henry III., in which, to a demand of dower the defendant pleaded that the demandant ought not to have dower, because after the death of her husband she married again; and it is a custom in those parts that the wives of deceased husbands shall have their *free bench* of the lands of socmen, (*consuetudo est in partibus illis quod uxores maritorum defunctorum habeant francum bancum suum de terris sockmannorum*;) and shall hold it as dower for their lives; but if, after the death of their husbands, they married any one, the custom is, in that county, that they shall lose the dower they held in the name of the first husband. *Bract.* fol. 308 b, 309. This custom of *free bench* still prevails in the manors of East and West Enborne, and Chadleworth, in the county of Berks, at Torr, in Devonshire, Kilmersdon in Somersetshire, and other places in the west of England. 2 *Chitty's Bl. Com.* 129, note. In some places, the widow is entitled to half, and in others, to the whole of the husband's land, or otherwise, according to the custom, but it is always confined to lands of which the husband died seised. *Id. ibid.* *Litt.* sect. 166. *Co. Litt.* 110 b.

**FREEBORD**. [L. Lat. *francbordus*.] In old records. An allowance of land over and above a certain limit, or boundary, as so much beyond, or without a fence. *Cowell. Blount.* 2 *Mon. Angl.* fol. 241 a.

The right of claiming that quantity. *Termes de la ley*.

**FREEBOROUGH**. See *Freoborh, Fri-borg*.

**FREE CHAPEL**. [L. Lat. *libera capella*.] In English law. A chapel, or place of worship, so called, because *exempted* from the jurisdiction of the ordinary or diocesan. It is always of royal foundation, or founded at least by private persons to whom the crown has granted the privilege. *Wharton's Lex. Termes de la ley. Reg. Orig.* 40 b, 41.

**FREE FISHERY**. [L. Lat. *libera piscaria*.] In English law. An exclusive right of fishing in a public river, [being a species of] royal franchise. 2 *Bl. Com.* 39. 2 *Steph. Com.* 22.—An exclusive right of fishery in a public navigable river, or sometimes in an arm of the sea, originating in a grant from the king. 1 *Chitt. Gen. Pr.* 224.—An exclusive right to fish in any public water, as in an arm of the sea. 1



*Crabb's Real Prop.* 114, § 108. See 3 *Kent's Com.* 410.

In American law, the definition of a free fishery does not seem to be settled. In Massachusetts it has been held not to be an exclusive right. 7 *Pick. R.* 79.

That *free fishery* properly imports an exclusive right, seems apparent from the well settled meaning of the term *free* in the common law, as explained under that head. See *Free*. By using *free*, however, in its popular sense of *common*, free fishery has sometimes been made identical with *common* fishery, or a right of fishery common to all. This opinion is maintained by Mr. Schultes in his *Essay on Aquatic Rights*, in which he also endeavors to show that free fishery and *common* of fishery (a still different species of the right,) import the same thing. Lord Coke is relied on in support of this last view, and Mr. Hargrave supposes the following passage from Coke Littleton to establish it. "So a man may prescribe to have *separalem piscariam*, [a several fishery] in such a water, and the owner of the soil shall not fish there; but if he claim to have *communiam piscariæ*, [common of fishery,] or *liberam piscariam*, [a free fishery,] the owner of the soil shall fish there." *Co. Litt.* 122 a. The passage hardly seems to warrant the inference drawn from it. The opinion of Lord Mansfield, in *Seymour v. Lord Courtenay*, is also considered by Mr. Schultes as favoring his view that free fishery and common of fishery are alike. But that opinion only went the length of distinguishing a *several* from a *free* fishery, and the remark of Lord Mansfield at the conclusion shows that he regarded a *common* of fishery as quite a different thing from either. 5 *Burr.* 2814, 2817.

That a free fishery signifies an exclusive right seems to have been assumed by the court, (Lord Holt, C. J.) in *Smith v. Kemp*, where it is clearly distinguished from a common fishery. 1 *Salk.* 637. What is said by Lords Coke and Mansfield, (*ubi supra*) merely goes to show that it is not so absolutely and rigidly exclusive as a *several* fishery, (the owner of which had it literally to himself,) but that it might or must be shared by another. The true idea of a free fishery seems to be, a franchise or monopoly which may be held by *two or more*, as well as a *single* individual, but which, in either case, is equally *exclusive* of the common right.

**FREEHOLD.** [L. Lat. *liberum tenementum*; L. Fr. *frank tenement*.] In Eng-

lish law. An estate either of inheritance or for life, in lands or tenements of free tenure. 1 *Steph. Com.* 217.—A possession of the soil which a *freeman* holds in fee, or at least for term of life. *Britt. c.* 32.

In American law. An estate of inheritance, or for life, in real property. 4 *Kent's Com.* 24. 1 *Hilliard's Real Prop.* 77.

*Freehold* is used in the common law to denote both the *tenure* by which an estate is held, and the *estate* itself. 1 *Steph. Com.* 197, note (e). *Id.* 217, note (f). As a tenure, it was called *free* to distinguish it from villeinage. (*Dicitur liberum tenementum, ad differentiam ejus quod est villenagium; quia tenementorum, aliud liberum, aliud villenagium.*) *Bract.* fol. 207. It is equivalent to tenure in free socage, and is the opposite of copyhold in modern English law. 1 *Steph. Com.* 197. As an estate, it seems originally to have properly denoted an estate of inheritance; an estate for life being, according to Bracton, only a *quasi* freehold. *Liberum tenementum est id quod quis tenet sibi et hæredibus suis in feodo, et hæreditate; vel in feodo tantum, sibi et hæredibus suis. Item ut liberum tenementum, sicut ad vitam tantum, vel eodem modo, ad tempus indeterminatum, absque aliqua certa temporis præfixione.* Freehold is that which one holds to him and his heirs, in fee, and inheritance; or in fee only, to him and his heirs. Also as freehold, as for life only, or in the same way for an indeterminate period, without any fixed limitation of time. *Bract.* fol. 207. The quality of an *indefinite duration*, here mentioned by Bracton, has always been the quality of a freehold estate. A term for years, for however long a period, and though far exceeding the duration of human life, is no freehold. *Bract.* fol. 27. 2 *Bl. Com.* 143.

**FREEHOLD IN LAW**, is where lands or tenements are descended to a man, and he may enter into them when he will; before his entry he has a *freehold in law*; after entry, he has a freehold in deed or fact. *Termes de la ley*.

**FREEHOLDER.** [L. Lat. *liber tenens*; L. Fr. *frank tenant*.] He who possesses a *freehold* estate.

A free tenant; one who *holds freely*, (*qui libere tenet*.) This was anciently the peculiar right of a freeman. Hence, where a man gave lands to his villein, "to hold *freely* to him and his heirs," it made him a freeman. *Bract.* fol. 24 b.

**FREEMAN.** [Lat. *liber homo*.] In civil and general law. One born or made free; the opposite of a slave. *Inst.* 1. 3, 4, 5. *Omnis homo aut est liber aut est servus.* *Bract.* fol. 4 b. See *Liber homo*.

In old European law. An allodial proprietor; the opposite of a vassal or feudal tenant, (*vassus* or *vassallus*.) *Esprit des Lois*, liv. 30, c. 17. 1 *Robertson's Charles V.* Appendix, Note viii.

In early English law. A free tenant, or freeholder; one who held land freely, as distinguished from a villein. *Mag. Charta*, c. 14. *Bract.* fol. 24 b. 2 *Inst.* 27. See *Liber homo*.

In modern law. A member of a corporation, company or city, possessing certain privileges.\* 3 *Steph. Com.* 196, 197.

**FREEMEN'S ROLL.** In English law. A list of all persons admitted burgesses or freemen for the purpose of those rights which are reserved by the Municipal Corporation Act, (5 & 6 Will. IV. c. 76,) as distinguished from the burgesses newly created by the act, and entitled to the rights which it newly confers, who are entered on the burgess roll. 3 *Steph. Com.* 197. *Cole on Crim. Inform.* 224.

**FREE PLEDGE.** See *Frank pledge*.

**FREE SERVICES.** [L. Lat. *libera servitia*.] In feudal and old English law. Such feudal services as were not unbecoming the character of a soldier or a freeman to perform; as to serve under his lord in the wars, to pay a sum of money, and the like. 2 *Bl. Com.* 60, 61.

Bracton makes a wide distinction between holding *freely* and holding by *free service*. *Est longe aliud tenere libere, et aliud tenere per liberum servitium; quia, quamvis quis teneat per liberum servitium, non tamen propter hoc tenet libere, quia tenementum quod conceditur villano, tenendum per liberum servitium, non facit villanum liberum, nisi teneat libere, non magis quam villenagium facit liberum hominem villanum, si liber homo teneat per villanas consuetudines; quia tenementum nihil confert nec detrahit personam, &c.* It is one thing to hold freely, and a far different thing to hold by free service; because, though one may hold by free service, yet he does not on this account hold freely; because a tenement which is granted to a villein to hold by free service, does not make the villein a freeman, unless he hold freely, any more than villeinage makes a free man a villein, if a freeman hold by villein customs; be-

cause the tenement neither adds to nor takes from the person, &c. *Bract.* fol. 24 b.

**FREE SHIPS.** In international law. Neutral vessels, sometimes so called. It is sometimes stipulated in treaties that *free ships shall make free goods*; that is, that enemy's property on board of neutral ships shall be protected from seizure and confiscation. 1 *Kent's Com.* 126—128, and note.

**FREE SOCAGE.** [L. Lat. *liberum socagium*.] A tenure by some certain and determinate service, (usually in England, fealty and rent;) called *free*, because the service was not only certain but honorable, and thus distinguished from *villein socage*, where the services, though certain, were of a baser nature. 2 *Bl. Com.* 79. 1 *Steph. Com.* 192, 194. *Termes de la ley*, voc. *Socage*. This is the tenure by which the great bulk of real property in England is now holden, having absorbed and swallowed up almost every other species of tenure. 2 *Bl. Com.* 79, 89. 1 *Steph. Com.* 197. Called also *common socage*, and in the statute 12 Car. II. c. 24, *free and common socage*. See *Socage*.

**FREE SOCMEN.** [L. Lat. *liberi sokemanni*.] In old English law. Tenants in free socage. *Glanv. lib.* 3, c. 7. 2 *Bl. Com.* 79.

**FREE or FRANK TENURE.** [L. Lat. *liberum tenementum*.] Freehold; the opposite of the ancient villeinage, and modern copyhold. 2 *Bl. Com.* 89, 90. See *Freehold*.

**FREE WARREN.** [L. Lat. *libera warrena*.] In English law. A royal franchise granted to a subject for the preservation or *custody*, (which the word *warren* signifies,) of certain animals called beasts and fowls of warren; being the exclusive right of taking and killing game within certain limits.\* 2 *Bl. Com.* 39, 417. 2 *Steph. Com.* 21. 1 *Chitt. Gen. Pr.* 223. See *Warren*.

**FREIGHT.** [L. Lat. *navium, fretum*; L. Fr. *freit*.] In maritime law. The price or sum paid for the actual transportation of goods by sea, from one place to another. 3 *Kent's Com.* 219.

In a larger sense. Any reward or compensation paid for the use of ships, including the transportation of passengers. *Id. ibid.*

**Freight is the mother of wages.** 3 *Kent's Com.* 196. Where a voyage is broken up by *vis major*, and no freight earned, no wages, *eo nomine*, are due. *Id. ibid.*

**FREIGHTER.** In maritime law. The party by whom a vessel is engaged or chartered; otherwise called the *charterer*. 2 *Steph. Com.* 184.

**FREIT.** L. Fr. Freight. *Kelham.*

**FRENDLESMAN.** Sax. The ancient name of an outlaw (*utlaughe*), in England; so called, according to Bracton, because he forfeited his *friends*, (*quod forisfacit amicos*;) all persons being forbidden to give him food or shelter, or to have any communication with him. *Bract. fol.* 128 b.

**FRENDWITE.** Sax. [from *freond*, a friend, and *wite*, a penalty.] In old English law. A fine exacted of one who harbored an outlawed friend. *Wharton's Lex.*

An acquittance or immunity from fore-fang, (*quietantia prioris prisae*.) *Fleta*, lib. 1, c. 47. *Cowell.*

**FRENTIKE.** L. Fr. Furiously insane; a madman. *Frentikes en lour rage.* *Britt. c.* 28. Hence *frantic*.

**FREO.** Sax. Free. *Spelman*, voc. *Friborga*.

**FREOBORGH, Freoborghes, Freoborhes.** Sax. [from *freo*, free, and *borh*, or *borhes*, a pledge.] In Saxon law. A free surety, or free pledge. *Spelman*, voc. *Friborga*. 2 *Inst.* 73. Lord Coke observes that the term *free-barrow* continued to be used in his day, in some places. *Id. ibid.*

**FREOBORHESHEOFOD.** Sax. [from *freoborhes*, a free pledge, and *heofod*, head.] In Saxon law. The head of a friborg or free pledge; a chief pledge. *Spelman*, voc. *Friborga*.

**Frequentia actus multum operatur.** The frequency of an act effects much. 4 *Co.* 78. *Wingate's Max.* 719, max. 192. A continual usage is of great effect to establish a right.

**FRERE.** L. Fr. A brother. *Frere eyne*; elder brother. *Frere pusne*; younger brother. *Britt. c.* 75.

**FRESCA.** L. Lat. In old records. Fresh water, or rain and land flood.

*Cowell. Somner Gavelkind*, p. 132, cited *ibid.* See *Frisca*.

**FRESCHE.** L. Fr. Fresh or new. *Britt. c.* 5. *Freschement*; freshly, newly. *Id. cc.* 15, 43.

**FRESH.** [L. Lat. *friscus*; L. Fr. *fresche*; Lat. *recens*.] In old English law. Recent, or new. See *Fresh disseisin*, *Fresh force*.

Without profit; a term applied in the old books to land. *Celuy que la terre tient issint charge, la lessent giser fresh, issint que home ne puit trover distress, &c.* He who holds the land so charged lets it lie *fresh*, so that the party cannot find a distress. *Stat. Gloucest. c.* 3. Land was said to lie *fresh*, not only when there was no cattle, or thing distrainable upon the land, of the value of the rent, or other profit behind, but also, though there was a sufficient distress to be taken, yet if the land were so enclosed about as that the lord could not come to take and carry away the distress to the pound, it was said to lie *fresh*, that is, without profit to the lord. 2 *Inst.* 296.

**FRESH DISSEISIN.** [L. Fr. *fresche disseisine*; L. Lat. *frisca seu recens disseisina*.] By the ancient common law, where a man had been disseised, he was allowed to right himself by force, by ejecting the disseisor from the premises, without resort to law, provided this was done forthwith, while the disseisin was *fresh*, (*flagrante disseisina*.) *Bract. fol.* 162 b. No particular time was limited for doing this, but Bracton suggested it should be fifteen days. *Id. fol.* 163. See *Britt. cc.* 32, 43, 44, 65.

**FRESH FINE.** In old English law. A fine that had been levied within a year past. *Stat. Westm. 2, c.* 45. *Cowell.*

**FRESH FORCE.** [L. Fr. *fresche force*; L. Lat. *frisca fortia*.] In old English law. Force, (that is, disseisin or deforcement) newly done. *Britt. c.* 32. *F. N. B. 7. C.* A term applied to force committed in any city or borough, and for which a peculiar remedy, called an assise or bill of *fresh force*, was provided. See *Assise of fresh force*.

**FRESH SUIT.** [L. Lat. *recens insecutio*.] In English law. Immediate or speedy pursuit, or prosecution. The pursuit of an offender, or felon, as a thief, immediately, or as soon as possible after the robbery, including the prosecution of

such pursuit until the apprehension and conviction of the offender. The object of this was to enable the party to recover his goods, which otherwise would belong to the king.\* *Britt.* c. 15.

The early and speedy prosecution of a suit. *Stat. Gloc.* c. 9.

**FRETTUM.** L. Lat. In old English law. Freight money. *Cowell.* *Rot. Claus.* 17 Johan. m. 18, cited *ibid.*

**FRETUM.** Lat. A strait. *Fretum Britanicum*; the strait between Dover and Calais, otherwise called *Fretum Gallicum*, and *Fretum Morinorum.* *Cowell*, Appendix.

**FRIBORG, FRIBORGH.** [L. Lat. *friborga, friborgus*, from Sax. *freo*, free, and *borh* or *borhes*, a pledge.] In Saxon and old English law. A free pledge, or frankpledge; one of the ancient Saxon names of the tithing or decennary; and also of the individuals who composed it; the chief of whom was called *friborgesheofod*, or *freoborhesheofod*, (qq. v.) *Spelman*, voc. *Friborga*. See *Tithing, Decennary*.

**FRIBORGESHEOFOD.** Sax. [from *friborgh*, a free pledge, and *heofod*, head.] A chief pledge, or head of a friborg. *LL. Edw. Conf.* c. 19.

**FRIDHBURGUS, Frithburgus.** [from Sax. *frith*, peace, and *borg*, a pledge.] In old English law. A kind of frankpledge, by which the lords or principal men were made responsible for their dependents or servants. *Bract.* fol. 124 b. It is usually confounded with the ordinary frankpledge, but seems to have been of a peculiar character. See *Frithborg*.

**FRIDSTOLL, Fridstow, Frithstow.** Sax. [from *frid* or *frith*, peace, and *stol*, a seat, or chair, or *stow*, a place.] In Saxon law. A seat, chair or place of peace, (*cathedra pacis*;) an asylum, refuge or sanctuary for offenders. *Spelman.* *Cowell.* Called *Grithstole*, in an old rhyming charter of King Athelstan. *Blount*, voc. *Frodmortel*.

**FRILAZIN.** [from Anglo-Germ. *fre*, Sax. *freo*, free, and *laschen*, to let go.] In old European law. A freedman; one emancipated from bondage, (*manumissus, libertus, libertinus.*) *Spelman.* *Crabb's Hist.* 9.

**FRILINGI.** L. Lat. [from Anglo-Sax. *fre*, free, and *ling*, offspring.] Persons of free descent, or freemen born; the middle class of persons among the Saxons. *Spelman*.

**FRISCUS.** L. Lat. [from Fr. *fresche*.] In old English law. Recent or new. *Frisca fortia*; fresh force; force recently committed, (*vis nupera et recenter illata.*) *Spelman.* *Reg. Orig.* 108 a.

Fresh, as distinguished from salt. *Mariscus friscus*; fresh marsh. *Spelman.* *Aqua frisca*; fresh water. *Reg. Orig.* 97.

Uncultivated, as ground. *Terra jacens frisca et ad warect'*; land lying fresh and fallow. *Towns. Pl.* 69. See *Fresh*.

**FRITH, Fridh.** Sax. Peace. *Spelman*.

**FRITHBORG.** Sax. [from *frith*, peace, and *borg*, a pledge; L. Lat. *frithborga, frithborgus*.] In Saxon law. A pledge or surety for the peace, (*pacis securitas*.) Sometimes confounded with *friborg*, (*friborga, friborgus*.) *Spelman*.

**FRITHBOTE.** Sax. [from *frith*, peace, and *bote*, compensation.] In Saxon law. A compensation, satisfaction or fine for breach of the peace. *LL. Inæ*, c. 23. *Crabb's Hist. Eng. Law*, 39. Otherwise called *fridwite*. The same as *fredum*, according to *Spelman*. See *Fredum*.

**FRITHBRECH.** Sax. [from *frith*, peace, and *brech*, a breaking.] In Saxon law. A breach or violation of the peace. *LL. Ethelred*, c. 6. *Cowell*.

**FRITHSOCNE, Frithsocne.** Sax. [from *frith*, peace and *socne*, a liberty or franchise.] In Saxon and old English law. A liberty, franchise, or jurisdiction to keep the peace, (*tuenda pacis jurisdictio*.) According to *Fleta*, the liberty of having a frankpledge. But to authorize this meaning, the word, according to *Spelman*, should be written *frisocne*.

**FRODMORTEL, Freomortel.** Sax. [from *freo*, free, and *mortdæl*, murder.] In Saxon law. An immunity or freedom granted for committing murder, or manslaughter. This word occurs in an old rhyming charter of King Athelstan to the chapel of St. Wilfrid of Rippon, quoted by *Blount*.

Ilkan of yis stedes sal have pees  
Of Frodmortel, and ils deeds  
Yat yair don is ———

**FROM**, (Lat. *a, ab*.) as a word expressive of *time*, is construed both inclusively and exclusively, though generally in the latter sense. The old rule was that when used to denote the commencement of a term, as a lease *from* such a day, it was to be taken exclusively. *Co. Litt.* 46 b. 5 *Co.* 1, *Clayton's case*. *Id.* 94 b, *Barwick's case*. But the day of a demise is now ordinarily considered as inclusive. 4 *Kent's Com.* 95, note (b). In other cases, however, as where a party is allowed a certain time *from* such a day, the old rule prevails, and the day is excluded. 4 *Wash. C. C. R.* 232. See 9 *N. Hamp. R.* 304. See *Computation, Time*. A distinction was formerly made between the expressions in a lease "from the date," (*a datu*.) and "from the day of the date," (*a die datu*s;) the former being held to include the day of date, the latter to exclude it. 2 *Salk.* 413, 625. 1 *Ld. Raym.* 473, 480. 2 *Id.* 1242. *Hargr. Co. Litt.* Note 281, lib. 1. But this distinction is not now observed, it having been held that the words "from the date," or "from the day of the date," mean either inclusive or exclusive, according to the context or subject matter. 5 *Co.* 2. *Cowp.* 714. 5 *Term R.* 287. 2 *Crabb's Real Prop.* 248, § 1301. See 1 *Hilliard's Real Prop.* 218.

*From*, as expressive of *place*, is always taken exclusively. Thus, "*from a port*" is exclusive of the port. The *terminus a quo* is the boundary line of the port, and when a vessel passes from that, she sails *from* the port, and is on the high seas. *Story, J.*, 2 *Mason's R.* 130, 131. See *At and from*.

**FRUCTUARIUS**. Lat. [from *fructus*, fruit, or increase.] In the civil law. One who had the usufruct of a thing; i. e. the use of the fruits, profits, or increase, as of land or animals. *Inst.* 2. 1. 36, 38. *Id.* 2. 9. 4, 5. Bracton applies it to a lessee, fermor or farmer of land, or one who held lands *ad firmam*, for a farm, or term. *Bract.* fol. 261. So *firmarius sive usufructuarius*. *Id.* fol. 165.

**FRUCTUS**. Lat. In the civil law. Fruit, fruits; produce; profit or increase; the organic productions of a thing. 1 *Mackeld. Civ. Law*, 156, § 154. *Fructus fundi*; the fruits of land. *Inst.* 2. 1. 35. *Fructus pecudum*; the produce of flocks. *Inst.* 2. 1. 37.

The right to the fruits of a thing belonging to another. *Dig.* 7. 1. 33.

The compensation which a man receives from another for the use or enjoyment of a

thing, such as interest or rent. *Dig.* 5. 3. 29. *Id.* 22. 1. 34. 1 *Mackeld. Civ. Law*, *ub. sup.*

**FRUCTUS CIVILES**. Lat. In the civil law. Civil fruits; the profits, returns or compensation which a man receives from another, for the use or enjoyment of a thing. 1 *Mackeld. Civ. Law*, 157, § 154. *Calv. Lex. Jur.* See *Fructus*.

**FRUCTUS INDUSTRIALES**, (or **FRUCTUS INDUSTRIÆ**.) Lat. Industrial fruits, or fruits of industry. Those fruits of a thing, as of land, which are produced by the labor and industry of the occupant, as crops of grain; as distinguished from such as are produced solely by the powers of nature. 1 *Mackeld. Civ. Law*, 156, § 154, Kaufmann's note. 2 *Kames' Equity*, 139. Emblements are so called in the common law. 2 *Steph. Com.* 258. 1 *Chitt. Gen. Pr.* 92. See *Fructus naturales*.

**FRUCTUS NATURALES**. Lat. In the civil law. Natural fruits. Those fruits or profits of land, or other thing, which are produced solely by the powers of nature, as the fruit of trees, the young, milk and wool of animals. 1 *Mackeld. Civ. Law*, 156, § 154. *Calv. Lex. Jur.*

**FRUCTUS PENDENTES**. Lat. In the civil law. The fruits of a thing, while united with the thing which produces them. Called also *fructus stantes*. *Dig.* 47. 2. 26. 1. *Id.* 24. 3. 7. 15. *Id.* 7. 1. 27. pr. 1 *Mackeld. Civ. Law*, 156, § 154.

**FRUCTUS SEPARATI**. Lat. In the civil law. Separate fruits; the fruits of a thing when they are separated from it. *Dig.* 7. 4. 13. 1 *Mackeld. Civ. Law*, *ub. sup.*

**FRUMGYLD**. Sax. [from *form*, or *formam*, first, and *gylt*, a payment.] In Saxon law. The first payment made to the kin of a slain person, in recompense of his murder. *LL. Edmundi*, c. ult. *Termes de la ley*. *Cowell*.

**FRUMSTOLL**. Sax. [from *form*, or *formam*, first, and *stol*, a seat.] In Saxon law. A chief seat, or mansion house. *LL. Inæ*, c. 38. *Cowell*.

**FRUSCA TERRA**. L. Lat. In old records. Uncultivated and desert ground. 2 *Mon. Angl.* 327, *Cowell*.

**FRUSSARE.** L. Lat. In old records. To break up. *Frussare terram*; to break or plough up new ground. *Cowell*.

**FRUSSURA.** L. Lat. [from Fr. *froisure*.] In old records. A breaking, or breaking up. *Frussura domorum*; house-breaking. *Gervas. Dorobern. A. D. 1195. Cowell. Frussura terræ*; new broke land, or land lately ploughed up. 2 *Mon. Angl.* 394. *Cowell. Blount*.

**FRUSTRA.** Lat. In vain; to no purpose. *Frustra [vana] est potentia que nunquam venit in actum.* That power is to no purpose which never comes into act, or which is never exercised. 2 *Co.* 51.

*Frustra feruntur leges nisi subditis et obedientibus.* Laws are made to no purpose, except for those that are subject and obedient. *Branch's Princ.*

*Frustra sit per plura, quod fieri potest per pauciora.* That is done to no purpose by many things, which can be done by fewer. *Jenk. Cent.* 68, case 28. The employment of more means or instruments for effecting a thing than is necessary, is to no purpose.

*Frustra petit quod mox ea restitutus.* In vain you ask that which you will have immediately to restore. 2 *Kames' Equity*, 104. 5 *Man. & Gr.* 757. A maxim of the Roman law, another form of which is, *Frustra petit quod statim alteri reddere cogitis.* Vainly you ask that which you will immediately be compelled to restore to another. *Jenk. Cent.* 256, case 49. 1 *Story's Equity Jur.* § 664. A party will not be aided to recover money which he may be immediately compelled to refund to those from whom he claims it. This maxim has been applied to the case of a partner seeking to recover a demand against the partnership firm of which he is a member. *Story on Partn.* § 221. 5 *Man. & Gr.* 757, arg.

**FRUSTRUM TERRÆ.** L. Lat. In old English law. A piece or fragment of land. A piece of land left over, after the measurement of a field, (*residuum quiddam præter campum mensuratum.*) *Spelman*.

A large piece of land lying by itself, and unconnected with any field, town or manor. *Domesday.* *Spelman* thinks it should be *frustum.* *Co. Litt.* 5 b.

**FRUTECTUM.** Lat. In old records. A place overgrown with shrubs and bushes. *Spelman. Blount*.

**FRYMTH.** *Fyrmth.* Sax. In Saxon

law. A taking in; the affording harbor and entertainment to any one. *Wharton's Lex.* Properly *firm* or *firma*. See *Florenfirma*.

**FRYTHE.** Sax. In old English law. A plain between woods. *Co. Litt.* 5 b. *Domesday*.

An arm of the sea, or a strait between two lands, (from Lat. *fretum*, a strait.) *Cowell. Camd. Brit.* cited *ibid.*

**FU, Fue.** L. Fr. Fire. *Kelham*.

**FUAGE.** [from Fr. *fouage*; L. Lat. *focagium*, from *focus*, a hearth.] In old English law. A tax laid upon the fire-place, hearth or chimney. Mentioned in *Domesday* as paid by custom to the king, for every chimney in the house. 1 *Bl. Com.* 324. Afterwards called hearth money, or hearth silver, and chiminage. *Id. ibid. Spelman*.

**FUER.** L. Fr. [from Lat. *fugere*.] In old English law. To fly or flee; to chase or drive. *Kelham. L. Fr. Dict.*

Flight. *Fuer en fait*; flight in fact, was when a man did apparently and corporally flee. *Fuer en ley*; flight in law, was when, being called in the county court, he failed to appear; for this was flight in interpretation of law. *Staundf. Pl. Cor.* lib. 3, c. 22. *Cowell*.

**FUGA.** Lat. Flight. *Fugam facere*; to make flight; to flee. *Fugam fecit*; he has made flight, he has fled. *Si aliquo prædictorum modorum fugam fecerint*; if they shall have fled in any of the aforesaid ways. *Bract. fol.* 6 b.

**FUGA CATALLORUM.** L. Lat. In old English law. A drove of cattle. *Blount*.

**FUGACIA.** L. Lat. [from *fugare*, q. v.] In old English law. A chase. The same as *chacea*, (q. v.) *Spelman. Blount*.

**FUGACIO, Fugatio.** L. Lat. [from *fugare*, q. v.] In old English law. The hunting of wild animals in forests, chases and parks. The liberty of hunting. *Et cives habeant fugaciones suas ad fugandum, &c. Chart. Libert. Hen. I. Civ. Lond. Spelman. Fugatio forestæ*; the drift of the forest. *Blount*.

**FUGARE.** L. Lat. [from *fuga*, flight.] In old English law. To chase or hunt; to drive; (*feras cursu premere et venari.*) *Spelman, voc. Fugacia. Fugare et refu-*

*gare catalla*; to drive cattle to and fro. *Blount*.

**FUGATOR.** L. Lat. [from *fugare*, q. v.] In old English law. A driver. *Fugatores carrucarum*; drivers of wagons. *Fleta*, lib. 2, c. 78.

**FUGITIVUS.** Lat. [L. Fr. *futyf*; Sax. *flyman*.] In old English law. A fugitive. *Fugitivi*; (Sax. *flymen*), fugitives. One who fled after committing a felony. See *Bona fugitivorum*.

A villein or bondman who left his lord without the intention of returning. *Cum consuetudinem revertendi habere desierint, incipiunt esse fugitivi, ad similitudinem cervorum domesticorum*; when they have discontinued the habit of returning, they begin to be fugitives, like tamed deer. *Bract*. fol. 6 b.

**FUGITIVE.** [from Lat. *fugitivus*.] One who, after committing an offence, flees from justice, that is, takes to flight in order to escape punishment. *Constit. U. States*, Art. IV. Sect. II. 1 *Kent's Com.* 36—38, and notes. 2 *Id.* 32, note. See *U. S. Digest & Supplement*, Fugitives from justice.

A slave who has escaped from his master. 2 *Kent's Com.* 32, and notes. 1 *Id.* 404, note. See *Fugitivus*.

**FULBORAN.** Lomb. Legitimate; one born without defect; fullborn. *Si quis dereliquerit filium legitimum unum, quod est fulboran, et filios naturales unum aut plures.* *LL. Longob.* lib. 2, tit. 14, l. 2. *Spelman*.

**FULFREA, Fulfreal.** Lomb. Absolutely or entirely free; full free. *Vadant liberi absoluti et fulfreales*; they shall go absolutely free, and fulfreal. *LL. Longob.* lib. 1, tit. 32, l. 5. *Spelman*.

**FULL AGE.** [L. Fr. *pleine age*; L. Lat. *plena atas*.] In common law. The age of twenty-one years, in males and females. *Litt.* sect. 259. 1 *Bl. Com.* 463. Sometimes simply called *age*. See *Age*.

In the civil law. The age of twenty-five years, in males and females. *Inst.* 1. 23. pr.

The common law period of full age is generally adopted in the United States. In Vermont and Ohio, however, females are deemed of age at eighteen. 2 *Kent's Com.* 233. 9 *Vermont R.* 42, 79. It is followed, also, in Louisiana and France. *Code Civil*, Art. 388, 489. *Civil Code of Louis-*

*iana*, Art. 41. 93. The rule of the civil law is followed, as to males, in Spain and Holland. *Institutes of Civil law of Spain*, b. 1, tit. 1, ch. 1, sec. 3. *Vander Linden's Institutes of the Laws of Holland*, b. 1, ch. 5, sec. 7. Full age is deemed to be completed on the beginning of the day preceding the anniversary of the person's birth. 1 *Salk.* 44. 1 *Ld. Raym.* 480. 2 *Salk.* 625. 1 *Bl. Com.* 463. 2 *Steph. Com.* 332. 2 *Kent's Com.* 233. Anciently, however, the heir of a knight's fee was not deemed of age until he had completed his twenty-first year, and had reached the twenty-second. (*De feodo militari habebit hæres plenam ætatem cum xxi. annum impleverit et xxii. attigerit.*) *Bract.* fol. 86, 86 b. The son and heir of a socman, on the other hand, was deemed of age when he had completed fifteen years. *Id. ibid.* The reason of this difference was that greater maturity and strength, both of mind and body, were requisite for bearing arms, and performing the other duties of military or knight's service. *Id. ibid.* *Litt.* sect. 103, 104. *Co. Litt.* 78 b.

**FULL BLOOD, (or WHOLE BLOOD.)** A term of relation, denoting descent from the same couple. Brothers and sisters of *full blood* are those who are born of the same father and mother, or, as Justinian calls them, *ex utroque parente conjuncti.* *Nov.* 118, c. 2, 3. 1 *Mackeld. Civil Law*, 140, § 132. The more usual term in modern law is *whole blood*, (q. v.)

**FULL COURT.** In practice. A term applied to a court sitting *in banc*, and implying, strictly, the presence of all the judges.\* 3 *Chitt. Gen. Pr.* 2. The term *full bench* is frequently used.

**FULL DEFENCE.** In pleading. The formula of defence in a plea, stated at length and without abbreviation, thus: "And the said C. D., by E. F. his attorney, comes and defends the force (or wrong) and injury when and where it shall behoove him, and the damages, and whatsoever else he ought to defend, and says," &c. *Steph. Pl.* (Am. ed. 1824,) ch. i. sect. vii. rule v.

**FULL LIFE.** Life in fact and in law. See *In full life*.

**FULL PROOF.** [Lat. *plena probatio*.] In the civil law. Proof by two witnesses, or a public instrument. *Hallifax Anal.* b. 3, ch. 9, num. 25, 30. 3 *Bl. Com.* 370.

**FULLO.** Lat. A fuller. *Si fullo poliendi curandave—vestimenta mercede certa constituta acceperit*: if a fuller have received garments to smooth, [scour] or dress, for a certain fixed price. *Inst.* 4. 1. 15.

**FULLUM.** L. Lat. In old English law. *Fullum aquæ*; a stream of water; a fleam, such as comes from a mill. *Blount.*

**FUMAGE.** [L. Lat. *fumagium*, from *fumus*, smoke.] In old English law. The same as *fuage*, or smoke farthings. 1 *Bl. Com.* 324. See *Fuage*.

**FUNCTUS.** Lat. [from *fungor*, to discharge an office.] One who has performed or discharged some function. *Functus officio*; one who has performed some office assigned to him. *Platt, J., 15 Johns. R.* 446. One whose official authority has ceased. *Story, J., 1 Gallison's R.* 69, 74. This phrase strictly is applicable only to persons, but is sometimes applied to things, as to the seal of a writ, the endorsement of a commercial instrument, and the like. *19 Johns. R.* 170. *Mills, J., 3 A. K. Marshall's (Ky.) R.* [324], 1166. *Wilde, J., 4 Metcalf's R.* 343, 345.

**FUNDAMUS.** L. Lat. [from *fundare*, to found.] We found. One of the words by which a corporation may be created in England. 1 *Bl. Com.* 473. 3 *Steph. Com.* 173.

**FUNDARE.** Lat. In old pleading. To found, or establish. A term formerly used to denote the supporting a plaintiff's or demandant's count or declaration, (*intentio* or *querela*.) by showing the facts and circumstances upon which his demand was founded. *Debet petens proponere intentionem suam, secundum formam brevis, et fundare eum sic: quod pater vel mater vel alius antecessor suus fuit seysitus, &c.* The demandant ought to propound his count, according to the form of the writ, and to establish it thus: that his father or mother or other ancestor was seised, &c. *Bract.* fol. 255 b. *Non sufficit simpliciter proponere intentionem suam, sic dicendo, Peto tantum terram ut jus meum, nisi sic illam fundaverit quod doceat ad ipsum jus pertinere, et per quam viam et per quos gradus jus ad ipsum debeat descendere.* It is not enough to simply propound his count, by saying thus: "I demand so much land as my right," unless he so found or establish it as to show, that the right belongs to him, and by what way and by what degrees the right ought to descend to him. *Id.* fol.

372 b. And see *Id.* fol. 183 b, 184, 214, 224 b, 261 b, 319 b.

To found a corporation; to give the necessary revenues for that purpose; to incorporate. 10 *Co.* 33, *The case of Sutton's Hospital.* See *Fundamus*, *Fundator*.

**FUNDATIO.** Lat. [from *fundare*, to found.] A founding, or foundation. *Fundatio incipiens*; incipient foundation; the incorporation of a college or hospital. *Fundatio perficiens*; the perfecting foundation; the dotation or endowment of it with funds. 10 *Co.* 33. 1 *Bl. Com.* 481.

**FUNDATOR.** Lat. [from *fundare*, to found.] A founder. *Fundator incipiens*; the incipient founder of a corporation; the king or state by whom it is incorporated. *Fundator perficiens*; the perfecting founder, the donor or endower of the institution with funds. 2 *Kent's Com.* 303.

**FUNDUS.** Lat. A farm. *Co. Litt.* 5 a. *Calv. Lex.*

Land or ground generally. *Si arbor mea in vicini fundo radices egerit*; if my tree throws out roots into my neighbor's land. *Bract.* fol. 10. *Qui alienum fundum ingreditur, venandi aut aucupandi gratia, potest a domino, si is praverit, prohiberi ne ingrediatur.* He who enters [or offers to enter] another's ground for the purpose of hunting or fowling, may be prevented by the owner from entering, if he foresee the act. *Inst.* 2. 1. 12. *Bract.* fol. 56. 3 *Bl. Com.* 209. According to Lord Coke, *fundus* includes every kind of building, as well as land. *Appellatione fundi omne ædificium, et omnis ager continetur.* 4 *Co.* 87. See *Dig.* 50. 16. 115.

The bottom, or foundation of a thing. *Fundus maris*; the bottom of the sea. *Schultes' Aquatic Rights*, 85, 127.

**FUNGIBLE THINGS.** [Lat. *res fungibiles*.] In the civil law. Things which may be furnished or restored in kind (*quæ functionem recipiunt in genere*;) as distinguished from specific things. A barbarous term, supposed to have originated in the use of the words *functionem recipere*, in the Digests. *Dig.* 12. 1. 2. 1 *Mackel-dey's Civil Law*, 153, § 148. Sometimes confined to moveable things which may be weighed, counted or measured, (*quæ pondere, numero, vel mensura constant.*) *Id. ibid.* In this sense, the word *fungible* is still used in Scotch law. 1 *Bell's Com.* 255, (5th ed.) *Story on Bailm.* § 284. Dr. Hallifax describes *res fungibiles* as con-



sumable goods, or things that perish in the using. *Hallifax Anal.* b. 2, c. 3, 15.

FUR. Lat. A thief. *Inst.* 4. 1. 3. *Bract.* fol. 105.

FUR MANIFESTUS. Lat. In the civil law. A manifest thief. A thief who is taken in the very act of stealing, (*qui in ipso furto*, Gr. ἐν αὐτοφώρῳ, *deprehenditur*;) or in the place where he committed it, (*eo loco quo furtum fit.*) *Inst.* 4. 1. 3. See *Furtum*.

FURCA. Lat. [L. Fr. *furche*.] A fork. See *Furcare*.

A gallows or gibbet. *Bract.* fol. 56. See *infra*.

FURCA ET FLAGELLUM. L. Lat. In old English law. Gallows and whip. *Tenure ad furcam et flagellum*; tenure by gallows and whip. The meanest of servile tenures, where the bondman was at the disposal of his lord for life and limb. *Cowell. Placit. M. T. 2 Johan. Rot.* 7, cited *ibid.*

FURCA ET FOSSA. L. Lat. In old English law. Gallows and pit, or pit and gallows. A term used in ancient charters to signify a jurisdiction of punishing thieves; viz. men by hanging, women by drowning. *Spelman. Cowell.* See *Fossa*.

FURCARE. L. Lat. [from *furca*, a fork; L. Fr. *fourcher, forcher*.] In old practice. To fork or divide. To divide in casting essoins. *Hengham Magna*, c. 9. *Cowell.*

To move or pitch with a fork. *Furcare ad tassum.* *Cowell.*

FURCHE. L. Fr. A gallows. *Britt.* c. 20.

FURIGELDUM. L. Lat. [from *fur*, a thief, and *geldum*, a payment.] A fine or mulct paid for theft.

FURIOSUS. Lat. [from *furere*, to rage.] A madman or lunatic; one violently insane. *Furiosus nullum negotium gerere potest, quia non intelligit quod agit.* A madman can transact no business, because he does not understand what he does. *Inst.* 3. 20. 8. *Tales* [furiosi] *non multum distant a brutis quæ ratione carent.* Such are not far removed from brutes, who have no reason. *Bract.* fol. 420 b. 4 *Co.* 126.

*Furiosus sale* [or *solum*,] *furere puniatur.* A madman is punished by his madness alone; that is, he is not answerable or punishable for his actions. *Co. Litt.* 247 b. 4 *Bl. Com.* 24, 396. *Broom's Max.* 9.

FURNAGIUM. L. Lat. [from *furnus*, an oven; L. Fr. *fournage*.] In old English law. A tribute or tax paid to a lord by his tenants, for the use of his oven. *Blount. Spelman.*

FURNUS. Lat. An oven. See *Secta ad furnum*.

FURST AND FANDONG. Sax. Time to advise or take counsel. *LL. Hen.* I. c. 46. *Whishaw.* *Spelman* gives this phrase without explanation.

FURTA. A word used in old records which *Cowell* thinks should be *furca*. (q. v.)

FURTHER ASSURANCE, *Covenant for.* One of the usual covenants entered into by a vendor, for the protection of the vendee's interest in the subject of the purchase. It seems to be confined to an assurance by way of conveyance, and not to extend to further obligations to be imposed on the covenantor by way of covenant. 2 *Sugden on Vendors*, 98, 108. *Wharton's Lex.* It is one of the usual covenants in common warranty deeds, and imports that the grantor will execute any such further instruments as may be found necessary to assure the title.

FURTUM. Lat. Theft. *Furtum est contrectatio fraudulosa, lucri faciendi gratiâ, vel ipsius rei, vel etiam usus ejus, possessionisve.* Theft is the fraudulent handling or meddling with a thing, or the use or possession of it, for the sake of making gain. *Inst.* 4. 1. 1. *Bracton* has borrowed some of the terms of this definition, but has otherwise considerably modified it. *Furtum est contrectatio rei alienæ fraudulenta, cum animo furandi, invito illo domino cujus res illa fuerit.* Theft is the fraudulent handling of another's property, with the intention of stealing it, against the will of its owner. *Bract.* fol. 150 b. This is adopted by *Lord Coke.* 3 *Inst.* 107. See *Theft, Contrectatio.*

A thing stolen. *Si furtum in manu, vel sub potestate alicujus inveniatur*; if the thing stolen be found in the hand or under the power of another. *Bract.* fol. 151 b.

Several derivations of the word *furtum* are given in the civil law, viz.: from *fur-*

*vum*, black or dark, because theft is committed privately, and generally in the night; or from *fraus*, fraud; or from *ferendo* or *auferendo*, taking away; or from the Gr. *φῦγα*, theft. *Inst.* 4. 1. 2.

**FURTUM MANIFESTUM.** Lat. In civil and old English law. Manifest theft, (Sax. *opentheft*.) *Furtum manifestum est ubi latro deprehensus est, seysitus de aliquo latrocinio, scilicet hondhabende et bacberende.* Manifest theft is where a thief is caught with any thing stolen in his possession, that is to say, having it in his hand, or carrying it on his back. *Bract.* fol. 150 b. According to the civil law, the thief must be taken before he reached the place where he intended to carry or deposit the thing stolen, in order to constitute manifest theft. *Inst.* 4. 1. 3. See *Fur manifestus*.

**FURTUM CONCEPTUM.** Lat. In the civil law. Received theft; the offence of receiving stolen goods. *Conceptum furtum dicitur cum apud aliquem, testibus presentibus, furtiva res quæsitæ et inventa sit.* Theft is called *conceptum*, when a thing stolen is searched for, and found upon some person, in the presence of witnesses. *Inst.* 4. 1. 4.

**FURTUM OBLATUM.** Lat. In the civil law. Offered theft. *Oblatum furtum dicitur cum res furtiva ab aliquo tibi oblata sit, eaque apud te concepta sit.* Theft is called *oblatum*, when a thing stolen is offered to you by any one, and found upon you. *Inst.* 4. 1. 4.

**FUSTIS.** Lat. In old English law. A staff, used in making livery of seisin. *Bract.* fol. 40.

A baton, club or cudgel. *Fuste et scuto defendere*; to defend with baton and buckler; that is, in the *duellum*, or combat. *LL. Longob.* lib. 1, tit. 25, l. 76. *Spelman.*

**FUSTIGATIO.** L. Lat. [from *fustis*, q. v.] In old English law. A beating with sticks or clubs; one of the ancient kinds of punishment of malefactors. *Bract.* fol. 104 b, lib. 3, tr. 1, c. 6. See *Spelman*, voc. *Fustuarium supplicium*.

**FUTURE ESTATE.** An estate to which a person is entitled in *futuro*; an estate in expectancy.\* 1 *Steph. Com.* 289. Of expectancies, there are at the common law two sorts; one called a *reversion*, the other called a *remainder*. *Id. ibid.*

In New-York, estates in expectancy have been divided into future estates and reversions; a future estate being defined "an estate commencing at a future day," or more fully, "an estate limited to commence in possession at a future day, either without the intervention of a precedent estate, or on the determination, by lapse of time or otherwise, of a precedent estate created at the same time." 1 *Rev. St.* [723.] 718, §§ 9, 10.

**FUTURI.** Lat. In old conveyancing. Those who are to be, or are hereafter to live. *Sciunt presentes et futuri, quod ego, &c.*; Know those who are present, and those who are to be, that I, &c. *Bract.* fol. 34 b. This reference to the future is of constant occurrence in ancient deeds, and variously expressed; as, *Noverint omnes visuri vel audituri, &c.* Know all men that shall see or hear, &c. *Blount*, voc. *Covenant. Old covenant, ibid.* So, in modern deeds poll, "To all to whom these presents shall come," &c.

**FUTYF, Futyfe, Futife, Fuy.** L. Fr. [from Lat. *fugitivus*, q. v.] A fugitive from justice. *Britt.* c. 1.

A fugitive or runaway bondman, or villain. *Id.* c. 31.

**FYN, Feyn.** L. Fr. A fine. *Britt.* cc. 11, 21.

**FYNDERINGA.** L. Lat. or Sax. In old English law. An offence mentioned in the laws of King Henry I. (c. 11,) the fine or compensation for which was reserved to the king. *Spelman* conjectures it to have been the *finding* of treasure, or concealment of treasure trove. But *Cowell* says the true reading is *fyrderinga*, or *firdering*, which signified a going out to war, or a military expedition at the king's command, the refusal or neglect of which was punished with a *firdwite*, or mulct at the king's pleasure. But *fynderinga*, in the passage above referred to, is clearly enumerated among crimes, (*incendium, hamsoene, forstall, fynderinga, flemenfirma*.) as a distinct thing from the offence of one *qui firdfare supersederit*, (who neglected to go out to war,) which is mentioned afterwards in the same chapter. *Spelman*, voc. *Fird*.

**FYRD, Fird, Ferd.** Sax. In Saxon law. An army; a military expedition; military service. *Fyrd* ships. *LL. Ethelred.* v. § 27. See *Firdfare, Firdwite*.

## G.

G, in Law French, is frequently used at the beginning of words, to express the English W; as *Gage* for *Wage*, *Gainage* for *Wainage*, *Gales* for *Wales*, *Gard* for *Ward*, *Garranty* for *Warranty*, *Garrene* for *Warren*, *Gast* for *Waste*, and the like.

GABEL, *Gavel*. [L. Lat. *gabella*, *gabellum*, *gabulum*; from Sax. *gafol*, *gafel*, qq. v.] In old English law. A tax, duty, impost, custom or tribute; a rent or service. *Cowell*.

GABELLA. L. Lat. [Fr. *gabelle*.] In old European law. A tax or duty on merchandise, or personal property. *Spelman*. *Cowell*.

A tax on salt in France. *Spelman*. *Brande*.

*Gabellatus*. A collector of taxes or customs. *Spelman*.

GABLUM, *Gabellum*. L. Lat. [from Sax. *gafol*, *gafel*, qq. v.] In old English law. A rent. *Domesday*. *LL. Inæ*, c. 88. *Hagas reddentes novem libras de gablo*; houses paying nine pounds of rent. *Camd. Brit.* 213. *Cowell* thinks it was a rent imposed by the power and will of the lord, as distinguished from a rent paid by agreement.

Interest, or usury; the profit of money. *Spelman*.

*Gablatores*. Those persons who paid *gabell*, rent or tribute. *Domesday*. *Cowell*.

GABLUM, *Gabulum*, *Gabula*. L. Lat. In old records. The head, end or extreme part of a house or building; the *gable*, or gable end. *Kennett's Gloss*. *Cowell*.

GAFOL, *Gafole*, *Gafel*, *Gaful*. Sax. Rent, or income; tax, tribute or custom. *Bere gafol*; a rent payable in barley. *Gafol land* or *gaful land*; rented land; land letten for rent, (*terra censa*.) *Spelman*.

The profit or gain of money; interest or usury. *Sax. Evang. S. Matth.* xxv. 27.

GAFOLGILD. Sax. [from *gafol*, rent, and *gild*, payment.] The payment of rent or income. *Gafolgildenhuse*; a house paying an annual rent. *Spelman*, voc. *Gabella*.

GAGE. L. Fr. & Eng. [from Fr. *gager*, (q. v.) L. Lat. *vadium*.] In old English law. Security; something given to secure the performance of an act. *Mys par gage et plegge*; put by gage and

pledge. *Britt. c. 27. Encontre gage et plegge*; against gage and pledge. *Id. ibid.* To put by *gage*, or take *gage*, was to take certain goods of a defendant, which he forfeited if he did not appear. 3 *Bl. Com.* 280. *Pledge* was a person taken as a surety. *Id. ibid.* See *Vadium*.

*Gage* is not generally used in English as a verb, (like the Fr. *gager*,) being converted into *wage* by the common change of *g* into *w*. See *Wage*.

GAGE, *Estates in*. Estates held as security; of which mortgages are the most common examples. See *Mortgage*.

GAGER. L. Fr. [L. Lat. *vadiare*.] In old English law. To give or find security or surety for doing a thing; to wage. *Gager ley*; to wage law; to give security for making it. *Britt. c. 27. Thel. Dig.* lib. 12, c. 27. *Gager deliverance*; to gage or wage deliverance; to give security for the delivery. *F. N. B.* 67, 74.

The giving of security; wager. *Gager de ley*; wager of law. *Crabb's Hist.* 295. See *Wager of law*.

GAGES, *Gaies*. L. Fr. Wages. *Britt. c. 30. Kelham*.

GAIGNAGE, *Gaignere*. L. Fr. *Wainage*. *Kelham*. See *Gainage*.

GAIGNARIE. L. Fr. *Gainery*; husbandry. *Kelham*.

GAIGNER. L. Fr. To till or cultivate; to obtain by husbandry. *Kelham*.

GAILLE. L. Fr. An old form of *Gaole*, (q. v.) *Kelham*.

GAIN. [L. Fr. *gainer*, q. v.] In old English law. To cultivate or till. See *Gainer*, *Gainage*. Arable land was called *hyde and gain*. *Co. Litt.* 85 b.

GAINAGE. L. Fr. & Eng. [L. Lat. *gainagium*, *wainagium*; L. Fr. *gaignage*, from Fr. *gainer*, to cultivate; or Sax. *wæn*, a wain or wagon.] In old English law. Implements of husbandry or plough tackle, including wains or wagons and their furniture for carrying on the work of tillage. *Cowell*. *Blount. Et vilain savant son gainage*; and the villein, saving his wainage. *Stat. Westm.* 1, c. 6.

The profit arising from the tillage of land. *Cowell. Termes de la ley*. See *Wainage*.

GAINER, *Gaigner*, *Gayner*. L. Fr.

To cultivate, plough or till. *Beasts queux* gainont son terre; beasts which gain or till his land. *Stat.* 51 *Hen.* III. cited 2 *Inst.* 132. See *Gayner*.

**GAINER**, *Gainor*, *Gainure*. L. Fr. Tillage or agriculture; the profit accruing thereby. *Cowell.* *O. N. B.* fol. 117.

**GAINERY**. [L. Fr. *gaignarie*.] In old English law. Tillage, or the profit of tillage. *Blount.* See *Gainer*.

**GAINOR**. In old English law. A sokeman; one who occupied or cultivated arable land. *O. N. B.* fol. 12.

**GAIUS**. A celebrated Roman jurist, whose Institutes formed the foundation for the Institutes of Justinian. An entire copy of this work was discovered by Niebuhr in 1816. 1 *Mackeld. Civ. Law*, 34, 35. 1 *Kent's Com.* 538, and note.

**GAJUM**, *Gagium*. L. Lat. In old European law. A thick wood. *LL. Longob.* lib. 1, tit. 25, l. 38. *Spelman*.

**GALEA**, *Galeia*, *Galeida*. L. Lat. In old records. A piratical vessel; a galley. *Spelman.* *Phranzes*, lib. 1, c. 36, cited *ibid.* *Pyratæ cum galeis alta maris custodientes*; pirates keeping the high seas with their galleys. *Matt. Paris*, A. D. 1243.

**GALES**. L. Fr. Wales. *Stat. Westm.* 1, c. 17. *North Gales*; North Wales. *Litt.* sect. 265.

**GALLIHALPENS**, *Gallyhalfpence*. A kind of coin which, with suskins and dotkins, was prohibited by the statute 3 *Hen.* V. c. 1. 4 *Bl. Com.* 99. 3 *Reeves' Hist.* 261. Said to have been a Genoa coin, brought into England by the Genoese merchants, who trading in galleys were called galley-men, and the small silver coin they used, galley halfpence. *Cowell.* Otherwise interpreted to mean *Gaul's half-pence*. *Blount.* According to Mr. Crabb, it was money brought by the Venetians in their galleys. *Crabb's Hist.* 356.

**GALLON**. [L. Fr. *galon*; L. Lat. *galo*, qq. v.] A measure of capacity, adopted in New-York as the unit or standard from which all other measures of capacity are to be derived and ascertained. 1 *Rev. St.* [608.] 617, § 11. The gallon for liquids is declared to be a vessel of such capacity as to contain, at the mean pressure of the atmosphere at the level of the sea, eight

pounds of distilled water, at its maximum density. *Id. ibid.* § 13. This is the same as the old English gallon. See *Galo*. The gallon for dry measure is declared to be a vessel of such capacity as to contain, at the mean pressure of the atmosphere at the level of the sea, ten pounds of distilled water at its maximum density. *Id. ibid.* § 14.

**GALO**, *Galona*. L. Lat. In old English law. A gallon. *Octo libras faciunt galonem vini, et octo galones vini faciunt bussellum, London*; eight pounds make a gallon of wine, and eight gallons of wine make a bushel, London. *Compositio Mensur.* 51 *Hen.* III. See *Stat. de Pistoribus*, c. 8. *Spelman.* 2 *Ld. Raym.* 824.

**GAMACTA**. L. Lat. In old European law. A stroke or blow. *L. Boior.* tit. 2, c. 4, § fin. *Spelman*.

**GAMALIS**. L. Lat. In old European law. A son or child born in lawful marriage. *LL. Longob.* lib. 2, tit. 55, l. 7. *Spelman*.

A child born of persons betrothed, but not actually married. *Id.*

**GAME**. All such animals as are *feræ naturæ* and objects of the chase.\* 2 *Bl. Com.* 410. *Wharton's Lex.* Defined by a late English statute (1 & 2 Will. IV. c. 32,) as including hares, pheasants, partridges, grouse, heath or moor game, black game and bustards. 2 *Steph. Com.* 82, 83.

In New-York, *game* includes pheasants, partridges, heath-hens, quails and woodcock. 1 *Rev. St.* [701, 702,] 698, 699.

**GAME LAWS**. Laws for the preservation of game; usually specifying at what times, by what means, (and, in some cases, by what persons,) certain descriptions of game shall be pursued and taken.\* The English game laws have recently been materially modified by statute 1 & 2 Will. IV. c. 32. 2 *Steph. Com.* 82, 83.

**GAMING**. The act or practice of playing any game, particularly games of hazard; which in certain cases is an indictable offence. *Lewis' U. S. Crim. Law*, 335—348. 1 *Russell on Crimes*, 323.

**GAMURDRIT**. In old European law. Murdered; secretly slain or made away with. *Si servus furtivo modo, supradicto more occisus fuerit, et ita absconsus, quod gemurdrit dicunt*; if a slave be secretly slain in manner aforesaid, and so hid, which

they call *gemurdrit*. *L. Boior. tit. 18, c. 2, § 3.*

**GAOL.** [L. Fr. *gaole*; L. Lat. *gaola*, qq. v.] A place of confinement or safe keeping.\* Commonly defined also as a *prison*, from which, however, it seems properly to be distinguishable; a *gaol* being a place of temporary confinement, or of confinement for minor offences, or for debt; a *prison* being a place of permanent confinement, and a place of punishment for crimes. Confinement in a *gaol* is, in most cases, with reference to some further proceeding, and does not always import guilt in the party confined. Thus *gaols* are used for the detention of witnesses, in order to secure their attendance in criminal cases, and for the confinement of persons charged with crime and committed for trial. See 2 *N. Y. Rev. St.* [754,] 632. The same idea of temporary or preliminary confinement is the radical one of the phrase *gaol delivery*, which has been used in criminal law from a very remote period; the *gaols* being by the process of trial *delivered* of their occupants, who are either wholly discharged if innocent, or punished according to law, if found guilty. See *Gaol delivery*. An essential difference between the terms is also imported in the common expressions "*county gaol*," and "*state prison*." The distinction however is by no means strictly observed in statute law, *gaol* and *prison* being frequently used as synonymous.

*Jail* is preferred by Webster as the orthography of this word, *gaol* being considered by him as a corruption. The reverse of this however seems to be the truth; *gaole* and *gaola* (qq. v.) being the Law-French and Law-Latin forms used constantly and by the earliest writers, while nothing approaching *jail* is to be met with. The forms *geaule* and *gaille* given by Kelham enable us to trace the corruption from *gaol* to *jail* without much difficulty.

**GAOLA.** L. Lat. In old English law. A *gaol*. *Bract. fol. 109, 110.* *Ad gaolam deliberandum*; *ad gaolas deliberandas*; for delivering a *gaol* or *gaols*. *Id. ibid. Reg. Jud. 30.* *Committatur gaolæ de Fleete*; shall be committed to the *gaol* of the Fleet. *Stat. Westm. 2, c. 11.*

**GAOLE.** L. Fr. In old English law. A *gaol*. *Envoye a nostre gaole*; sent to our *gaol*. *Britt. c. 15.* *Le pleyntyfe soit mys en la gaole, et illongs puny par prison et par fin*; the plaintiff shall be put in the *gaol*, and there punished by imprisonment and by fine. *Id. c. 100.*

**GAOLER.** The keeper of a *gaol*. The sheriff is considered as the keeper of the *gaol* of his county; the actual keeper being, in contemplation of law, only the sheriff's deputy. 3 *Steph. Com.* 249. 1 *Bl. Com.* 346. 1 *N. Y. Rev. St.* [380, § 75,] 372, § 86. 2 *Id.* [754,] 632.

**GAOL DELIVERY.** [L. Fr. *deliverance de gaole*.] In criminal law. The delivery or clearing of a *gaol* of the prisoners confined therein, by trying them; the *gaol* being considered as delivered by their acquittal or punishment. *Ad gaolam deliberandum de illis qui in prisa—invenitur.* *Bract. fol. 110.* A commission of general *gaol delivery* is one of the four commissions under which the judges in England sit at the assizes; and it empowers them to try and *deliver* every prisoner who shall be in the *gaol*, (that is either in actual custody, or out on bail,) when the judges arrive at the circuit town. 4 *Chitt. Bl. Com.* 270, and notes. 4 *Steph. Com.* 333. 1 *Chitt. Crim. Law*, 145, 146. The higher criminal courts in England and the United States are called courts of *Oyer and Terminer*, and *general gaol delivery*.

**GAOL LIBERTIES (or LIMITS.)** A certain extent of ground around or contiguous to a *gaol*, and designated by certain lines or boundaries, within which the persons confined are allowed to go at large on giving security not to escape; being, in contemplation of law, a mere extension of the *gaol* itself, as a matter of indulgence to the prisoners.\* 6 *Johns. R.* 121. 2 *Term R.* 26.

**GARANDIA.** L. Lat. A warranty. *Spelman.* See *Garantia*.

**GARANTIA,** *Garandia, Garantum.* L. Lat. [In English law, *warrantia, warrantum*; Lomb. *warens*; Sax. spec. *warenda, warendatio*: all from the Sax. *wæren*, to keep or protect.] In Norman law. A warranty. *Spelman.*

*Garantizare.* To warrant. *Id.*

*Garantus.* A warrantor. (Lomb. *warens*; Sax. *warendator*.) *Id.*

**GARATHINX.** Lomb. In old Lombardic law. A gift; a free or absolute gift; a gift of the whole of a thing. *LL. Longob. lib. 2, tit. 17, l. 1.* *Id. tit. 15, ll. 1, 3.* *Spelman.*

**GARAUNT,** *Garraunt, Garant.* L. Fr. In old English law. A party called upon, or who might be called upon to warrant

another; a vouchee; a party warranting. *De garaunt voucher*; of warrant voucher; of vouching to warranty. *Britt.* c. 75. *Garaunt que luy est tenu a garaunter*: a warrantor who is bound to him to warrant. *Id. ibid.* *Le garaunt se fist per sa garaunty sicome principal tenaunt*; the warrantor makes himself by his warranty the principal tenant. *Id. ibid.*

**GARAUNTER**, *Garraunter*. L. Fr. To warrant. *Garaunter en un sen signyfie a defendre le tenaunt en sa seisine, et en un autre sen signifie que si il ne le defende, que le garaunt luy soit tenu a eschaunges, et de faire son gree a la vaillaunce*; to warrant signifies, in one sense, to defend the tenant in his seisin, and in another sense, it signifies that if the party called upon to warrant do not defend him, he shall be bound to exchange (or recompense) and to make him satisfaction to the value. *Britt.* c. 75.

**GARAUNTIE**, *Garaunty*. L. Fr. Warranty. *Britt.* c. 39, 75.

**GARAUNTOR**. L. Fr. A warrantor; a vouchee. *Britt.* c. 24. *Garaunte*; a warrantee; a person warranted. *Id. ibid.*

**GARBA**. L. Lat. [L. Fr. *garbe*.] In old English law. A bundle or sheaf. *Blada in garbis*; corn or grain in sheaves. *Reg. Orig.* 96. *Bract.* fol. 209. See *Charta de Foresta*, c. 7.

*Garba sagittarum*; a sheaf of arrows. *Skene*.

**GARBLE**. In old English statutes. To sort or cull out the good from the bad in spices, drugs, &c. *Cowell. Blount, vocc. Garbling, Garbler*.

**GARDE**, *Gard*. L. Fr. [Lat. *custodia*.] Custody; care or keeping; ward. *Que est garde de prisons*; who has the keeping of prisons. *Stat. Westm.* 1, c. 15. *La garde de cors*; custody of the body. *Britt.* c. 11.

Ward, or wardship of a minor. *Britt.* c. 66.

A ward. *Id.* c. 21.

**GARDEYN**, *Gardeyn*. L. Fr. [from *garde* or *garder*, qq. v.] A guardian. *Britt.* c. 35, 81. *Litt.* sect. 48, 116. *Gardein* is used as an English word in Coke Littleton. *Co. Litt.* 38 b.

A keeper. *Britt.* cc. i, 11.

A warden. *Artic. sup. Chart.* c. 20.

**GARDER**. L. Fr. To keep. *Sauvement gardes*; safely kept. *Britt.* c. 87.

**GARDEYN**. L. Fr. A guardian. *Britt.* c. 35. See *Gardein*.

A garden. *Britt.* c. 53.

**GARDIAN**, *Gardeyne*. Old forms of *Guardian*, (q. v.) *Cowell*.

**GARDIANUS**. L. Lat. [from Fr. *gardein*.] In old English law. A guardian, defender or protector. In feudal law, *gardio. Spelman*.

A warden. *Gardianus ecclesie*; a church-warden. See *Defensor. Gardianus quinque portuum*; Warden of the Cinque Ports. *Spelman*.

**GARDINUM**. L. Lat. In old English law. A garden. *Reg. Orig.* 1 b, 2.

**GARENE**. L. Fr. A warren; a privileged place for keeping animals. *Britt.* c. 19. *Bestes sauvages pris hors de place defendue et garene*; wild animals taken out of a place prohibited and protected. *Id.* c. 33.

**GARNER**, *Garnir*. L. Fr. To warn, or give notice; to summon; to give time for preparation. *Reasonablement garny*; reasonably warned. *Stat. Westm.* 1, c. 44. *De soy garner de ses respons*; to prepare his answer. *Britt.* c. 121.

To furnish or provide; to clothe. See *Garnisher, Garnement*.

**GARNEMENT**. L. Fr. [from *garner*, q. v.] Furniture; clothing; a garment. *Obligacion doit estre vestus de v. maneres de garnementz*; obligation may be clothed in five kinds of garments. *Britt.* c. 28. *Id.* c. 39.

**GARNISH**. [L. Lat. *pensiuncula carceraria*] In English law. Money paid by a prisoner on his entrance into gaol. Forbidden by statute 4 Geo. IV. c. 43, § 12, r. 23. *Wharton's Lex. Holthouse*.

To **GARNISH**. [L. Fr. *garnisher*.] To warn or give notice. *Cowell*.

**GARNISHEE**. [from L. Fr. *garnir*, to warn.] A person warned. A party in whose hands money or property is attached by the creditor of another, and who has had *warning* or *garnishment* not to pay or deliver it. See *Garnishment, Foreign Attachment*.

**GARNISHER**. L. Fr. To warn or summon. *Kelham*.

**GARNISHMENT.** [L. Fr. *garnissement*, *garnement*, from *garnir*, to warn or furnish.] In old English law. A warning; a furnishing. A *warning* given to one for his appearance, for the better *furnishing* the court and cause. *Cowell. Blount.*—A warning or summons to a party to appear and give the court instruction on any matter. *Crabb's Hist.* 422.

In the old action of detinue of charters, the defendant might say that the charters were delivered to him by the plaintiff and another upon certain conditions, and pray that the other might be *warned* to plead with the plaintiff whether the conditions were performed or not; the object of the warning or *garnishment* thus prayed for being, to *furnish* the court with all parties to the action, so that it might the more advantageously determine the cause. *Termes de la ley. Cowell. Blount.* It was nearly allied to the proceedings in interpleader. 3 *Reeves' Hist.* 448. The definition of Cowell, above given, is intended to embrace both the significations of garnishment.

**GARNISHMENT.** In the process of attachment. A warning to a person not to pay money or deliver property to another, but to appear and answer a plaintiff creditor's suit. *Cowell. Blount, voc. Garnishee. Wharton's Lex.*

**GARNISTURA,** *Garnestura.* L. Lat. [L. Fr. *garnesture*.] In old English law. A furnishing or providing; garniture; furniture; provision, ammunition and other implements of war. *Cowell. Blount. Matt. Paris.* A. D. 1250.

**GARRANT,** *Garrante.* L. Fr. Warrant or authority. *Sans especial* garrant; without special warrant. *Stat. Westm.* 1, c. 24. *Eient lour garrante*; shall have their warrant. *Artic. sup. Chart.* c. 2.

**GARRANTER.** L. Fr. To warrant. *Co. Litt.* 365 a. See *Garaunter*.

**GARRANTIE,** *Garranty.* L. Fr. Warranty. *Litt. sect.* 145, 697. *Stat. Gloc.* c. 12.

**GARRANTOR.** L. Fr. A warrantor, or person called upon to warrant. *Stat. Gloc.* c. 12.

**GARRENA,** *Garrenna.* L. Lat. In old English law. A warren. *Cowell. Spelman.* See *Warren*.

**GARRENE,** *Garren, Garreyn.* L. Fr. A warren; a place for keeping and preserving animals. *Britt.* c. 33, 42, 53. *Kelham.* See *Garrene*.

**GARSUMME.** In old English law. A fine or amercement. *Cowell.* Written also *Gressume* and *Grossome*, but properly *Gersuma*, (qq. v.) *Blount's Nomolex.* Advertisement.

**GARTH.** In English law. A yard; a little close or homestead in the north of England. *Cowell. Blount.*

A dam or wear in a river, for the catching of fish. *Id.*

**GASACHIO,** *Gasachius.* L. Lat. [from Sax. *sac*, a cause.] In old European law. An adversary in a cause. *L. Salic.* tit. 52, § 2. *Spelman.*

**GASINDUS,** *Gasindius.* L. Lat. [from Fr. *case*, a house, and Sax. *hynde*, a servant.] In old European law. A house or domestic servant. *Marculf.* lib. 2, form. 26. *Spelman.*

A family or household, (*gasindium*.) *L. Longob.* lib. 2, tit. 14, l. 17. *Spelman.*

**GAST.** L. Fr. Waste. *Britt.* c. 51.

**GASTALDUS,** *Gastaldius, Gastaldio, Guastaldus.* L. Lat. & Lomb. [from Sax. *gast*, a guest, and *haldian*, to keep or take care of.] In old European law. A steward, seneschal, bailiff or major-domo. *Spelman.* Applied also to higher officers, as the governor of a city or province. *Id. ibid.*

**GASTEL.** L. Fr. Wastel; wastel bread; the finest sort of wheat bread. *Britt.* c. 30. *Kelham.*

**GASTER.** L. Fr. To waste. *Britt.* c. 5. *Gaster le boys*; to waste the woods. *Id. ibid.*

**GASTINE.** L. Fr. Waste or uncultivated ground. *Britt.* c. 57.

**GATE.** In English law. A right in land for the use of cattle.\* Called in Suffolk, a *beast-gate*, and in Yorkshire a *cattle-gate*. It is a corporeal interest in land, distinguishable from the mere right of common of pasture. 1 *Chitt. Gen. Pr.* 182.

**GAUDERE.** Lat. To enjoy. *Nisi gaudeat lucidis intervallis*; unless he enjoys lucid intervals. *Bract.* fol. 12.

**GAUGEATOR.** L. Lat. In old English law. A gauger or gager. *Cowell.*

**GAUGETUM.** L. Lat. In old English law. A gauge, or gauging. *De recto gaugeto Anglicano*; of the true English gauge. *Rot. Parl.* 35 *Edw.* I. *Blount.*

**GAVEL.** [from Sax. *gafol*, *gafel*, qq. v.] In English law. Custom, tribute; toll; yearly rent; payment or revenue; of which there were anciently several sorts; as *gavel-corn*, *gavel-malt*, *oat-gavel*, *gavel-fodder*, &c. *Termes de la ley.* *Cowell.* *Co. Litt.* 142 a.

**GAVELBRED.** In English law. Rent reserved in bread, corn or provision; rent payable in kind. *Cowell.*

**GAVELET,** *Gavelate.* [L. Lat. *gaveletum*, *gavilettum*; from *gavel*, rent or custom, and the old word *let*, to cease or hinder.] In English law. A rent. *Co. Litt.* 142 a.

A process for the recovery of rent. *Hargrave's Note* 231, lib. 2. A customary process, (called *consuetudo de gavelato*), for the recovery of rent or service withheld by a tenant in gavelkind, whereby the lord might seize the land in the nature of a distress, to be returned to the tenant in case he paid the rent. *Termes de la ley.* *Cowell.* It was a species of *cessavit*, originally peculiar to the tenure in gavelkind, and confined to Kent, but by the Statute of Gavelet, 10 *Edw.* II., was extended to the city of London. *Crabb's Hist.* 203.

**GAVELET,** *Statute of.* The statute of 10 *Edw.* II. by which the proceeding by gavelet, or a similar proceeding, was extended to the city of London, and the law on that subject otherwise modified. 2 *Reeves' Hist.* 298. *Crabb's Hist.* 203.

**GAVELGELD,** *Gavelgild.* Sax. [from *gavel* or *gafel*, rent or income, and *geld*, payment; L. Lat. *gavelgilda*.] In old English law. That which yields a rent or annual profit. *Si in gavelgilda, id est, in gablum reddente domo pugna fiat*; if the fight be in a gavelgild, that is a house paying a rent. *LL. Inæ*, c. 6. *Cowell.* *Spelman*, voc. *Gavelgilda*. See *Gafolgild*.

That which pays a tribute or toll; the tribute or toll itself. 3 *Mon. Angl.* 155. *Cowell.* *Blount.*

**GAVELHERTE,** *Gavelerth.* Sax. In old English law. The duty or work of ploughing so much earth or ground, done

by the customary tenant for his lord. *Cowell.* A rent or customary service, paid or performed by ploughing.\*

**GAVELING MEN.** Tenants who paid a reserved rent, besides some customary duties to be done by them. *Cowell.* See *Gavelman*.

**GAVELKIND,** *Gavelkynd.* A customary tenure in England, peculiar for the most part to the county of Kent, by which the land of the father is equally divided at his death among all his sons, or the land of the brother among all his brethren, if he have no issue of his own. *Kitch.* fol. 107. *Cowell.* *Blount.* 2 *Bl. Com.* 84. 1 *Steph. Com.* 53, 201. *Litt.* sect. 210, 265. The other distinguishing properties of this tenure are that the tenant is of age sufficient to alien his estate by feoffment at the age of fifteen; and that the estate does not escheat in case of an attainder for felony. *Camd. Brit.* 239. *Bract.* fol. 276 b. 2 *Bl. Com.* 84. 1 *Steph. Com.* 200. 1 *Crabb's Real Prop.* 596, § 753.

Gavelkind is supposed to have been a part of those ancient liberties which the Kentish men were allowed by the Conqueror to retain without change; and it is the opinion of Selden that before the Norman conquest it was the general custom of the realm. *Seld. Analect.* l. 2. c. 7. *Spelman*, in voc. *Camd. Brit.* cited in *Cowell.* *T. Raym.* 76. It still prevails over almost the whole of the county of Kent, and in a qualified manner over copyhold lands in various parts of the kingdom. *Third Real Property Report*, p. 8. 1 *Steph. Com.* 200, note. 1 *Crabb's Real Prop.* 596—602. *Lee on Abstracts*, 25, 84, 85.

The etymology of the word itself has been variously given. *Spelman* derives it from the Sax. *gafel*, a tribute, or thing due or belonging, and *cyn*, kindred, or *kynd*, offspring; something due or belonging to all the children or kindred. *Mr. Hargrave* prefers the derivation from *gavel*, rent, and *kind*; of such a kind as to yield rent. *Hargr. Co. Litt.* Note 224, lib. 2. *Mr. Crabb* adopts the latter, defining it however to mean a *kind of service*. *Crabb's Hist. Eng. Law*, 87. *Lambard*, on the other hand, considers it as composed of three Saxon words *gif*, *eal*, *cyn*; *given to all the kin*; which *Spelman* adopts as the alternative of his own derivation.

**GAVELMAN.** In old English law. A tenant liable to the payment of gavel or tribute. *Somner on Gavelkind*, 23.



**GAVELMED.** In old English law. A duty, work or service of mowing grass, or cutting meadow land, required by a lord from his customary tenant. *Consuetudo falcandi quæ vocatur gavelmed.* Somner, *Gavelk.* Appendix. Cowell.

**GAVELREP,** *Gaveltryp.* In old English law. Bedreap or bidreap; the duty of reaping at the bid or command of the lord. Somner, *Gavelk.* 19, 21. Cowell.

**GAVELSESTER.** [L. Lat. *sextarius vectigalis.*] In old English law. A certain measure of rent-ale. Cowell. That is, a rent, tribute or gavel, payable in a certain measure (a sextary or sexter) of ale.\* Otherwise called *Tolcester.*

**GAVELWERK.** In old English law. A rent or tribute paid in work, either by the person of the tenant, called *manu-opera*, or by his carts or carriages, called *carr-opera.* Blount.

**GAYNAGE.** L. Fr. Plough tackle, or implements of husbandry; wainage. Kelham.

**GAYNE.** L. Fr. Gain. *Britt.* c. 30.

**GAYNER.** L. Fr. To till or cultivate. *Si tu gaynes ma terre sauns mon conge*; if you till my land without my leave. *Britt.* c. 54.

To gain. *Pur gayner ne per perdre*; to gain nor to lose. *Id.* c. 122.

**GAYNERIE.** L. Fr. Acquisition. *Britt.* c. 53.

**GE,** *Gi, Gi.* L. Fr. I. Kelham. Corrupt forms of *Jeo.*

**GEBOCIAN.** Sax. [from *boc*, a writing.] To convey by writing. 1 Reeves' *Hist. Eng. Law*, 10. See *Boc*, *Bocland*, *Landboc.*

**GEBURSCIP.** Sax. [L. Lat. *geburscipa.*] In Saxon law. Neighborhood or adjoining district. *Nominentur ei sex homines de eadem geburscipa in qua ille residens est*; there shall be named to him six men of the same *geburscip* in which he is a resident. *LL. Edw. Conf.* c. 1. Cowell.

**GEBURUS.** L. Lat. [Sax. *gebure.*] In old English law. A country neighbour; an inhabitant of the same *geburscip*, or village. Cowell.

**GEIGNEUR.** L. Fr. [from *gainer*, to plow.] In Norman law. A husbandman or cultivator of the soil. *Grand Custum.* c. 32.

**GELD,** *Gild.* Sax. [from *geldan*, *gyl-dan*, to pay; L. Lat. *geldum*, *geldus*, *geltum*, *gilda*; Græcobarb. γέλιον.] In Saxon and old English law. A payment, (*solutio*, *redditus*), tax or tribute, (*tributum*;) a sum of money exacted of a subject, (*exactio*, *pecunia*.) *Vicinos werra, suos exercitibus frequentissimis, et geldis continuis vexabat*; he harassed his neighbors with war, and his own subjects with frequent military expeditions, and continual exactions. *Henr. Huntington, Hist.* lib. 7. *de Will. Rufo*, A. D. 1100. *Spelman.* There were various kinds of geld, as *Danegeld*, *wodegeld*, *senegeld*, *horngeld*, *folgeld*, *pen-geld*, &c. (qq. v.) In Domesday *geldum*, or *geltum*, is generally used for *Danegeld*, which was a tribute regularly imposed upon every town in the time of the Saxons. *Spelman.*

A mulct or fine; a satisfaction or compensation for a crime, (*compensatio delicti*;) the price or value of a thing; (*pretium rei*.) *Spelman.* *Wergild*, the value or price of a man slain; *orfgild*, the value of a beast slain; *angild*, the single value; *twigild*, double the value; *trigild*, triple; &c. *Id.* See *Gild*, *Wergild*, *Orfgild*, *Angild*, *Twigild*, *Trigild*, *Octogild*, *Novigild*.

**GELDABLE.** Liable to pay geld; liable to be taxed. Kelham. See *Gildable*.

**GELDUM,** *Geltum*, *Geldus.* L. Lat. In old English law. Geld, or gild. *Spelman.* See *Geld*.

**GELINA.** L. Lat. In old records. A bundle or sheaf of grain. *Spelman.*

**GEMOT,** *Gemote*, or *Mote.* Sax. [from *gemettan*, to meet or assemble: L. Lat. *gemotum*.] In Saxon law. A public meeting or assembly, (*conventus publicus*;) a court, or judicial tribunal, (*mallum*, *placitum*, *forum juridicum*.) *Spelman*, voc. *Gemotum*. Used in various combinations, as *wittenagemot*, a meeting of the wise men; *folcgemot*, or *folcmote*, a meeting of the people; *sciregemot*, a meeting of the shire, a county meeting, or court; *hundredgemot* a meeting of the hundred, or hundred court; *wardegemot*, a ward meeting; *halig-gemot*, an ecclesiastical meeting or court; *halmot*, a hall meeting, or court, a court baron; *swainagemot*, a forest court. See these words. *Ge*, in this word, is merely a particle, frequently prefixed to Saxon

nouns and verbs. *Spelman, ub. sup.* See *Mote*.

**GEMOTUM.** L. Lat. [Sax. *gemote, mote*.] In Saxon law. A public meeting, or court. *Si quis gemotum, id est placitum, supersedeat ter, &c.*; if any one shall absent himself from court three times, &c. *LL. Athelstan, c. 20. Omnis homo pacem habeat eundo ad gemotum, et rediens de gemoto, nisi probatus fur fuerit*; every man shall have peace, (that is, privilege from arrest,) while going to court, and returning from court, unless he be proved to be a thief. *LL. Edw. Conf. c. 35. Spelman.*

**GENEATH.** Sax. In Saxon law. A villen, or agricultural tenant, (*villanus, villicus*;) a hind or farmer, (*firmarius, rusticus*.) *LL. Inæ, c. 19. Spelman.*

**GENERAL AGENT.** A person who is authorized by his principal to execute all deeds, sign all contracts, or purchase all goods, required in a particular trade, business, or employment. *Story on Agency, § 17.*

In another sense, a person who has a general authority in regard to a particular object or thing. *Id. § 18.*

**GENERAL AVERAGE.** In commercial law. A contribution made by the proprietors in general of a ship or cargo, towards the loss sustained by any individual of their number, whose property has been voluntarily sacrificed for the common safety; as where in a storm, jettison is made of any goods, or sails or masts are cut away *levandæ navis causâ*, (to lighten the vessel.) *2 Steph. Com. 179. See Average.*

**GENERAL DAMAGES.** In pleading and practice. Such damages as necessarily result from the injury complained of, and which may be shown under the *ad damnum*, or general allegation of damages at the end of the declaration. *2 Greenleaf on Ev. § 254.*

**GENERAL DEMURRER.** In pleading. A demurrer framed in general terms, without showing specifically the nature of the objection, and which is usually resorted to, where the objection is to matter of substance. *Steph. Plead. 140—142. 1 Chitt. Pl. 663. See Demurrer.*

**GENERAL ISSUE.** In pleading. A short general plea, in actions at law, denying the allegations contained in the plain-

tiff's declaration in summary terms, and concluding with a tender of issue.\* *Steph. Pl. 155. 3 Steph. Com. 576. 1 Chitt. Pl. 472.* It is called the *general* issue, according to Mr. Stephen, because the issue that it tenders, involving the whole declaration, or the principal part of it, is of a more *general* and comprehensive kind than that usually tendered by a common traverse. *Steph. Pl. ub. sup. See Issue, Traverse.*

**GENERAL LEGACY.** A pecuniary legacy, payable out of the general assets of a testator. *2 Bl. Com. 512. Ward on Legacies, 1, 16.*

**GENERAL LIEN.** The right which the bailee of a chattel has to retain possession of it from the owner, until payment be made not only for the particular article, or some labor, service or expense performed, incurred or laid out upon or in relation to it, but of any balance that may be due on general account in the same line of business.\* *2 Steph. Com. 132. See Lien.*

**GENERAL OCCUPANT.** At common law where a man was tenant *pur auter vie*, or had an estate granted to himself only, (without mentioning his heirs,) for the life of another man, and died without alienation during the life of *cestuy que vie*, or him by whose life it was holden, he that could first enter on the land might lawfully retain the possession, so long as *cestuy que vie* lived, by right of occupancy, and was hence termed a *general* or *common occupant*. *2 Bl. Com. 258. 1 Steph. Com. 415. 2 Crabb's Real Prop. 79, § 1049.* But this right of general occupancy was taken away by the statutes 29 Car. II. c. 3, and 14 Geo. II. c. 20. *Id. ibid.*

**GENERAL PARTNERSHIP.** A partnership in which the parties carry on all their trade and business, whatever it may be, for the joint benefit and profit of all the parties concerned, whether the capital stock be limited or not, or the contributions thereto be equal or unequal. *Story on Partn. § 74.*

**GENERAL SHIP.** In maritime law. A ship open to all merchants; as distinguished from a *chartered* ship, which is contracted for by one or more exclusively. When the goods of several merchants, unconnected with each other, are laden on board without any particular contract of affreightment with any individual for the entire ship, the vessel is called a *general*

ship. 3 *Kent's Com.* 202. 2 *Steph. Com.* 184. *Smith's Merc. Law*, 175.

**GENERAL (or PUBLIC) STATUTE.** A statute relating to the whole community, or concerning all persons generally, as distinguished from a private or special statute. 4 *Co.* 75 a, *Holland's case*. 1 *Bl. Com.* 85, 86. *Dwarris on Statutes*, 629.

**GENERAL VERDICT.** In practice. The ordinary verdict delivered orally by a jury in civil actions, in which they find generally "for the plaintiff," or "for the defendant," and which is entered on record in the terms of the issue or issues referred to them. 2 *Tidd's Pr.* 869. 1 *Arch. Pr.* 213.

**GENERAL WARRANT.** A process which formerly issued from the state secretary's office in England, to take up, (without naming any persons in particular,) the author, printer and publisher of certain libels specified in it. It was declared illegal and void for uncertainty by a vote of the House of Commons. *Com. Journ.* 22 April, 1766.

**GENERALE.** L. Fr. General. *Generale rule de ley est que, &c.* *Britt.* c. 121. *Generalement*; generally. *Id.* fol. 3.

**GENERALIS.** Lat. General. *Generalissimum*; most general. 2 *Bl. Com.* 19. *Generalis clausula non porrigitur ad ea que antea specialiter sunt comprehensa.* A general clause does not extend to those things which are previously provided for specially. 8 *Co.* 154 b, *Altham's case*. Therefore, where a deed at the first contains special words, and afterwards concludes in general words, both words, as well general as special, shall stand. *Id. ibid.*

**GENERALE.** Lat. General; a general thing.

*Generale nihil certum implicat.* A general expression implies nothing certain. 2 *Co.* 34 b, *Doddington's case*. A general recital in a deed has not the effect of an estoppel. *Best on Evid.* 408, § 370.

*Generale tantum valet in generalibus, quantum singulare in singulis.* What is general is of as much force among general things, as what is particular is among things particular. 11 *Co.* 59 b, *Foster's case*.

*Generale dictum generaliter est interpretandum.* A general expression is to be interpreted generally. 8 *Co.* 116 a, *Bonham's case*.

**GENERALIA.** Lat. (pl. of *generale*.) General things.

*Generalia sunt praeponenda singularibus.* General things are to be put before particular things. *Branch. Princ. Generalia procedunt, specialia sequuntur.* General things precede, special things follow. *Id.*

*Generalia specialibus non derogant.* General things do not derogate from, or affect things special. *Jenk. Cent.* 120, case 41. Applied to a general statute passed after a special one. *Id. ibid.*

*Generalia verba sunt generaliter intelligenda.* General words are to be understood generally, or in a general sense. 3 *Inst.* 76.

**GENERALITER.** Lat. [from *generalis*, q. v.] Generally.

*Generaliter dicta generaliter sunt interpretanda.* Things expressed in general terms, are to be interpreted generally. *Shep. Touch.* 88.

**GENEROSUS.** L. Lat. Gentleman; a gentleman. *Spelman*.

**GENEROSA.** L. Lat. Gentlewoman. *Cowell.* 2 *Inst.* 668.

**GENICULUM.** L. Lat. In old feudal law. A generation; a degree of consanguinity. *Lib. Feud.* 1, tit. 1. *L. Longob.* lib. 2, tit. 14, l. 1. *Spelman*.

**GENS.** Lat. In Roman law. A class or clan; a subdivision of the Roman people next in order to the *curia*, (q. v.) and which was again subdivided into *familiae*. *Adam's Rom. Ant.* 34. *Brande.* See *Familia*.

A people or nation. See *Gentes*.

**GENTES.** (pl. of *gens*.) L. Lat. People. *Contra omnes gentes*; against all people. *Bract.* fol. 37 b. Words used in the clause of warranty in old deeds.

**GENTLEMAN.** [L. Lat. *generosus*.] A title in England ranking next below esquire. 1 *Bl. Com.* 405, 406. *Spelman*, voc. *Generosus*.

**GENTS, Gentes, Gentz, Gentez, Geans, Gienz.** L. Fr. [L. Lat. *gentes*, q. v.] In old English law. People; persons; folk. *Des gents de la ville*; the people of the town. *Stat. Westm.* 1, c. 7. *Les lays gents que ne sont apprises en la ley*; the common people who are not learned in the law. *Litt. sect.* 331. *Artic. sup. Chart.*

c. 2. *Touts autres gentes de mound* ; all other people of the world. *Stat. Mod. Lev. Fines*. Gentz *malades* ; sick people. *Britt. c. 21*. Gentz *arrages* ; insane persons. *Id. c. 34*. Gentz *nient demorauntz en pays* ; persons not residing in the country or neighborhood. *Id. c. 21*. Used by Britton in the same sentence with *people*. *Id. ib. fol. 36*.

The singular *gent* also sometimes occurs in the books. *Ceuz que endorment la gent* ; those who charm the people. *Britt. c. 15*. *Desgarny de forte gent* ; unprovided with brave people. *Id. c. 123*.

GENUS. Lat. A general word. 4 Co. 76 a.

GEREFA, *Grefa, Refa*. Sax. [from *gerefen* or *reafen*, to exact or take away.] In Saxon law. Greve, reve or reeve ; a ministerial officer of high antiquity in England ; answering to the *grave* or *graf* (*grafio*), of the early continental nations. The term was applied to various grades of officers, from the *scyre-gerefa*, *shire-grefe* or *shire-reve*, who had charge of the county, (and whose title and office have been perpetuated in the modern *sheriff*), down to the *tun-gerefa*, or town-reeve, and lower. Spelman (voc. *Grafio*), supposes it to have properly denoted an officer employed to collect taxes, or public dues, (*ad jura fiscalia exigenda*.) 1 *Spence's Chancery*, 60. See *Grafio*, *Greve*, *Reeve*.

A steward or superintendent. *Sax. Evang. Matt. xx. 8*.

GERENS. Lat. [from *gerere*, to bear.] Bearing. *Gerens datum* ; bearing date. 1 *Ld. Raym.* 336. *Hob.* 19.

GERERE. Lat. To bear or carry ; to behave or conduct ; to act. *Pro hærede gerere* ; to act as heir. *Inst.* 2. 19. 6. *Pro hærede gerere est pro domino gerere* ; to act as heir is to act as owner. *Id. ibid.* *Calv. Lex. Jur.* *Gerit pro hærede*. *Bract.* fol. 70 b.

To manage, or administer. *Calv. Lex.*

GERMANUS. Lat. Descended of the same stock, or from the same couple of ancestors ; of the whole or full blood. 1 *Mackeld. Civ. Law.* 140, § 132.

GERSUMA. Sax. & L. Lat. In old English law. A price, reward or sum of money ; (*sumptus, præmium* ; ) the greater and better part of goods. *Spelman. Chron. Sax.* A. D. 1035, 1065, cited *ibid.*

A fine or consideration paid for a thing.

The word is used very frequently in this sense in old charters. *Sciatis me pro tot libris quas N. mihi dedit in gersumam, dedisse, concessisse, &c.* ; Know ye that I, for so many pounds which N. has given me for a *gersume*, have given, granted, &c. *Spelman*.

A fine, amercement or compensation for an offence. *Spelman*.

This word is written by Matthew Paris *gersoma*. *Gressume*, *grossome* and *garsumme* are other forms of it ; but these are pronounced by Mr. Blount to be corruptions. *Blount's Nomolex.* (ed. 1691,) Advertisement.

GERSUMARIUS. L. Lat. [from *gersuma*, q. v.] In old English law. Fiable, or liable to be mulcted, fined or amerced at the discretion of the lord. *Cowell*.

GEST. Sax. In Saxon law. A guest. A name given to a stranger on the *second night* of his entertainment in another's house. *Twa night gest*. *LL. Edw. Conf. c. 17*, *apud Spelman*, voc. *Homehyme*. *Bracton* writes the word *gust*. *Bract.* fol. 124 b. *Geste* is the form in Britton. *Britt. c. 12*.

GESTIO. L. Lat. [from *gerere*, to behave, act or do.] In the civil law. Behaviour, or conduct. See *Gestio pro hærede*.

Management or transaction. *Negotiorum gestio* ; the doing of another's business ; an interference in the affairs of another in his absence, from benevolence or friendship, and without authority. *Dig.* 3. 5. 45. *Id.* 46. 3. 12. 4. 2 *Kent's Com.* 616, note.

GESTIO PRO HÆREDE. L. Lat. In the civil law. Behaviour as heir ; that conduct by which an heir renders himself liable for his ancestor's debts ; as by taking possession of title deeds, receiving rents, cultivating land, &c. *Scotch Dict.* 1 *Forbes' Inst.* part 3, b. 2. p. 100. See *Gerere*.

GESTOR. Lat. [from *gerere*, to act.] In the civil law. One who acts for another, or transacts another's business. *Calv. Lex.* See *Negotiorum gestor*.

GESTUM. Lat. [from *gerere*, to do.] Done ; a thing done. A distinction was sometimes made in the civil law, between this word and *factum*. Gaius, however, in the Digests pronounces this to be subtle, (*subtilis*) and holds that practically there was no difference between them. *Dig.* 50. 16. 58.

**GESTUS.** Lat. [from *gerere*, to conduct; L. Fr. *gest*, *gette*.] In old English law. Behaviour; conduct. See *De gestu et fama*.

**GETTER.** L. Fr. To throw or cast. *Gette*; cast, (as an essoyn.) *Britt. c.* 74. 123.

**GEWITNESSA.** Sax. In Saxon law. The giving of evidence. *LL. Ethelred. c.* 2, *apud Brompton*.

**GEWRITE.** Sax. Writings. Deeds or charters were so called among the Saxons. 1 *Reeves' Hist. Eng. Law*, 10. *Crabb's Hist.* 14. See *Landboc*.

**GIFT.** [L. Lat. *donatio*; L. Fr. *don*, *done*.] A voluntary and gratuitous conveyance, or transfer of lands or goods from one to another, not founded on the consideration of money or blood.\* 2 *Bl. Com.* 440. 2 *Steph. Com.* 102. 2 *Kent's Com.* 437.

In English law. A conveyance of lands in tail; a conveyance of an estate tail in which the operative words are "I give," (*do*), or "I have given," (*dedi*.) 2 *Bl. Com.* 316. 1 *Steph. Com.* 473. See *Donatio*, *Dons*.

In a general sense, a *gift* is the most comprehensive kind of transfer in law. The ancient conveyances of land in England were nearly all *gifts*. Bracton calls *donatio*, (*gift*) the most important and distinguished, as well as the most ordinary method by which property could be acquired. *Inter alias causas acquisitionis magna, celebris et famosa est causa donationis*, &c. *Quia per eam magis acquiritur et scæpius quam per aliam*, &c. *Bract. fol.* 11. *I give*, (*do*), is the term constantly employed by the same writer in his examples of the most free, large, and absolute kind of conveyance. *Id. fol.* 17. Gifts indeed at this time expressly included conveyances in fee simple, as well as fee tail. *Donationum, quædam absoluta et larga, et quædam stricta et coarctata, sicut certis hæredibus. Id. fol.* 11 b. Afterwards, the term *gift* came to acquire the peculiar and technical meaning now appropriated to it in the English law of real estate, being restricted in its application to estates tail; the distinction being made between a *gift in tail* and a *feoffment in fee*. The latter conveyance however continued to be called a *gift* (*donatio feudi*), and its aptest word was *do*, (I give), or *dedi*, (I have given.) 2 *Bl. Com.* 316, 310. See *Gratuitous*.

#### GIFT OF PERSONAL PROPERTY.

A voluntary and gratuitous transfer of a chattel or chose in action; which to be valid and binding, must either be accompanied by the solemnity of a deed, or by that of actual delivery of possession. 2 *Steph. Com.* 102. 2 *Bl. Com.* 440, 441. 2 *Kent's Com.* 437—443. *U. S. Digest and Supplement*, Gift. See *Donatio*.

**GIFTA AQUÆ.** L. Lat. In old records. A stream of water. *Blount.* 3 *Mon. Angl.* cited *ibid*.

**GILD, Guild, Geld.** Sax. [from *geldan*, or *gyldan*, to pay; L. Lat. *gilda*, *gildum*.] In Saxon law. A tax or tribute. *Spelman*, voc. *Geldum. Camd. Brit.* 135, 139, 159. &c. See *Geld*. Hence *gildable*, taxable.

A fine, mulct, or amerciamen; a satisfaction or compensation for an injury. *Crompton Jurisd.* 191. *Spelman*, voc. *Geldum*. See *Wergild*, *Orfgild*, *Angild*, &c.

A fraternity, society, or company of persons combined together, under certain regulations, and with the king's license, and so called because its expenses were defrayed by the contributions, (*geld*, *gild*, Sax. a payment,) of its members, (*quod ex conjectis pecuniis sodalitiis impendio subministratur*.) *Spelman*, ub. *sup.* *Termes de la ley*. In other words, a corporation; called in Latin *societas*, *collegium*, *fratria*, *fraternitas*, *sodalitium*, *adunatio*; and in foreign law, *gildonia*. *Spelman*, ub. *sup.* There were various kinds of these *gilds*, as merchant, or commercial *gilds*, religious *gilds*, and others. 3 *Turner's Hist. Anglo Sax.* 98. 3 *Steph. Com.* 173, note (u). See *Gilda Mercatoria*.

A friborg, or decennary; called by the Saxons *gyldscipes*, and its members *gildones*, and *congildones*. *Spelman*, ub. *sup.*

**GILDA, Guilda.** L. Lat. In old English law. A gild or guild; a company or corporation. *Spelman*, voc. *Geldum*.

**GILDA MERCATORIA.** L. Lat. A gild merchant, or merchant gild; a gild, corporation, or company of merchants. *Reg. Orig.* 219 b. 2 *Ld. Raym.* 1134. 1 *Spence's Chancery*, 55. 8 *Co.* 125 a. If the king grants to a set of men to have *gildam mercatoriam*, this alone is sufficient to incorporate and establish them forever. 10 *Co.* 30. 1 *Roll. Abr.* 513. 1 *Bl. Com.* 473, 474.

**GILDABLE, Guildable, Geldable.** [from Sax. *gild*, or *geld*, qq. v.] In old

English law. Taxable, tributary or contributory; liable to pay tax or tribute. *Cowell. Blount. Stat. 27 Hen. VIII. c. 26. 8 Co. 125 a.*

GILDALE. [from Sax. *geld*, a payment.] In old English law. A computation, where every one paid his share. *Cowell. Blount.*

GILD-HALL. See *Guild-hall*.

GILDHALLA, *Guildhalda*. L. Lat. [*gilda aula* or *halla*.] In old English law. The hall or place of meeting of a gild; a guild-hall. *Spelman, voc. Geldum. Gildhalla Teutonicorum*; the hall or place of meeting of the fraternity of Easterling merchants, (or merchants of the Hanse-towns,) in London: called the Stilyard. *Spelman, ub. sup. Cowell, voc. Gild. Stat. 22 Hen. VIII. c. 8.*

GILD MERCHANT. A company of merchants. See *Gilda mercatoria*.

GILDO. L. Lat. In Saxon law. A member of a gild or friborg. *Spelman, voc. Geldum.*

GILDRENT. A rent payable by any gild or fraternity. *Blount.*

GILDONIA. L. Lat. In old European law. A gild or company. *Spelman, voc. Geldum*. This word is of frequent occurrence in the laws of the Franks, Lombards, and other early nations of Europe. *Id. ibid.*

GILOUR. L. Fr. A cheat or deceiver. Applied in Britton to those who sold false or spurious things for good, as pewter for silver or latén for gold. *Britt. c. 15.*

GIPPEWICUS, *Gipwicus, Gippus*. L. Lat. Ipswich, in England. 2 *Ld. Raym.* 1239. 2 *Salk.* 434.

GISARMES, *Guisarmes*. L. Fr. In old English statutes. A kind of axe or halbert; a bill. *Stat. Winton. 13 Edw. I. Spelman.*

GISER, *Gyser*. L. Fr. [from Lat. *jacere*.] In old English law. To lie. *Giser a meason*; to lie or lodge at a house. *Stat. Westm. 1, c. 1. Giser en langour*; to lie sick. *Britt. c. 115. Gisaunte au founs*; lying at the bottom. *Id. c. 1. Ne gist en le bouche*; it does not lie in the mouth. *Litt. sect. 58, 149. Literally*

rendered in the Latin of the statute of Westminster 2, (c. 9.) *non jacet in ore*. The English of this phrase is still used. *Gisont*; (they) lie. *Litt. sect. 10.*

To lie, as an action; to be competent. *Ou assise ne gist point*; when an assise does not lie. *Britt. c. 43. Ou gist atteynte. Id. c. 98.*

GIST, (or GIT) OF AN ACTION. The material point on which the action lies. 5 *Mod.* 305. 1 *Str.* 574.

GISIL, *Gisilis*. L. Lat. & Lomb. In old European law. A witness; a pledge or hostage. *LL. Longob. lib. 2, tit. 15, l. 1. Spelman.*

To GIVE. [Lat. *dare*.] I give, (*do*;) I have given, (*dedi*.) The emphatic and apt words of ancient deeds of gift. See *Gift, Do, Dare, Dedi*. The word *give* in a conveyance no longer implies or imports in England a covenant in law, as it formerly did. *Stat. 8 & 9 Vict. c. 10, § 6. Archbold Land. & Ten. 67, 68.* The old English rule is still followed in some of the United States. See 2 *Hilliard's Real Prop.* 365, 366.

GLADIUS. Lat. A sword. An ancient emblem of defence. *Gladius significat defensionem regni et patriæ. Bract. fol. 5 b.* Hence the ancient earls or *comites*, (the king's attendants, advisers, and associates in his government,) were made by being girt with swords. *Id. ibid.*

The emblem of the executory power of the law in punishing crimes. 4 *Bl. Com.* 177. See *Jus gladii*.

GLANS. Lat. In old English law. Acorns, nuts or mast of the oak and other trees, as the chesnut and beech. It seems to have included any produce of trees that might be fed upon by animals, as distinguished from herbage. *Glandis nomine continetur glans castanea, fagina, ficus et nuces, et alia quæque quæ edi vel pasci poterunt præter herbam. Bract. fol. 226 b. 2 Inst.* 411.

GLANVILLE. The author of the most ancient treatise on English law, written in Latin about A. D. 1181, under the title of *Tractatus de Legibus et Consuetudinibus Angliæ*; (A Treatise of the Laws and customs of England.) The older writers are generally agreed that this was *Ranulphus de Glanvilla*, chief justiciary of England, to Henry II. who was equally eminent as a soldier and a judge, and died at the siege

of Acre, in 1190. *Hoveden in Hen. II. Staunf. Præf.* c. 1, fol. 5. Catlin, C. J., *Plowden*, 368 a. *Cowell*. 8 Co. pref. *Crabb's Hist. Eng. Law*, 70. The same opinion is adopted by Spelman. Lord Coke gives the arms and genealogy of Glanville, and speaks with the greatest confidence on the subject. 8 Co. ub. sup. Mr. Reeves, however, doubts the identity of these individuals, and thinks that the Glanville who wrote the Treatise might have been a person of that name who was a justice itinerant. 1 *Reeves' Hist. Eng. Law*, 223.

As to the work itself, there is little doubt of its being the most ancient treatise on English law. Spelman remarks that Glanville was the first who attempted to make that law, a *lex scripta*, or written law. *Hic cum ad suam usque ætatem, ἀγραφος, id est, non scripta, mansisset maxima pars juris nostri, omnium primus ἔγραφεον reddere aggressus est.* Spelman, vocc. *Justitia, Justitarius*. But it possesses a higher interest even than this, from the fact of its being the oldest work of the kind in Europe. Dr. Robertson observes that it was the first undertaking in any country of Europe to collect into one body the customs which then regulated the administration of justice, and thus to render the law fixed. 1 *Robertson's Charles V.*, Appendix, Note xxv. Defontaines, the oldest law writer in France, composed his *Conseil* about half a century afterwards. See *Defontaines*.

**GLEBA.** Lat. A turf, sod or clod of earth.

The soil or ground; cultivated land in general. *Cod. Theodos.* See *Adscriptitius*.

Church land; (*solum et dos ecclesiæ*.) Spelman. See *Glebe*.

**GLEBARIÆ.** L. Lat. [from *gleba*, q. v.] In old records. Turfs or peat; peat lands. 1 *Mon. Angl.* 920. *Cowell*.

**GLEBE, Glebeland.** [L. Fr. *glebe*; L. Lat. *gleba*.] In ecclesiastical law. Church land; land belonging to a parish church. *Cowell*. *Blount*. A portion of land attached to the benefice of a rector or vicar, in addition to the parsonage or vicarage house, as part of its endowment. 3 *Steph. Com.* 113. Anciently called *dos ecclesiæ*. *Lyndewode, Prov. lib.* 3, tit. *de eccles. ædific.* § 1. Spelman. *Com. Dig.* Dismes, B. 2. The four aickers of land, quihlk is granted to the ministers of the evangel within this land, is called *ane glebe*. *Skene de Verb. Signif.* voc. *Mansus*.

**GLOSS.** [L. Lat. *glossa*, q. v.] An annotation or comment on any passage in the text of a work, for the purpose of explanation. Particularly applied to the comments on the Roman law. See *Glossa*.

**GLOSSA.** L. Lat. [from Gr. γλῶσσα, a tongue.] A gloss, explanation or interpretation. The *glossæ* of the Roman law are brief illustrative comments or annotations on the text of Justinian's collections, made by the professors who taught or lectured on them about the twelfth century, and were hence called *glossators*. 1 *Mackeld. Civ. Law*, 66, § 80. These glosses were at first inserted in the text with the words to which they referred, and were called *glossæ interlineares*; but afterwards they were placed in the margin, partly at the side, and partly under the text, and called *glossæ marginales*. A selection of them was made by Accursius, between A. D. 1220, and 1260, under the title of *Glossa ordinaria*, which is of the greatest authority. *Id. ibid.*

*Glossen viperina est quæ corrodit viscera textus.* That is a viperous gloss which eats out the bowels of the text. 10 Co. 70, *Case of the Marshalsea*. Otherwise expressed, *Viperina est expositio quæ corrodit viscera textus.* 11 *Id.* 34 a, *Poulter's case*. 2 *Bulstr.* 179.

**GLOSSATOR.** L. Lat. [from *glossa*, q. v.] In the civil law. A commentator or annotator. A term applied to the professors and teachers of the Roman law in the twelfth century, at the head of whom was Irnerius. 1 *Mackeld. Civ. Law*, 66, § 80.

**GLOUC'.** An abbreviation of *Gloucesteria*, (Gloucester,) in old English pleadings and records. *Towns. Pl.* 147.

**GLOUCESTER or GLOCESTER, Statute of.** A celebrated English statute, passed in the sixth year of the reign of Edward I. It is composed of fifteen chapters, in Law French, and is commented on by Lord Coke in his second Institute. It was the first statute that gave costs in actions. 2 *Reeves' Hist. Eng. Law*, 144, *et seq.*

**GLYN.** In old English law. A valley. *Co. Litt.* 5 b.

**GO.** [Lat. *ire*; L. Fr. *aler*.] In practice. To be dismissed from court. "To go without day," applied to a defendant, is to be finally dismissed, or dis-

charged from the action. See *Day, Eat inde sine die*.

**GODBOTE.** Sax. [from *God*, and *bote*, a fine, or amend.] In old English law. A fine or amercement anciently imposed for offences against religion; an ecclesiastical or church fine. *Cowell. Blount.*

**GODGILD, Godgeld.** Sax. [from *God*, and *gild* or *geld*, a payment.] In Saxon law. That which is paid or offered to God, or his service. *LL. Alured. præf. Spelman, voc. Geldum.*

**GOD'S PENNY.** In old English law. Earnest money. See *Denarius Dei*.

**GOGINGSTOLE.** An old form of the word *cuckingstool*, (q. v.) *Cowell.*

**GOLDA.** L. Lat. In old records. A sink or passage for water. 2 *Mon. Angl.* 610. *Cowell.*

**GOLIARDUS.** L. Lat. A jester, buffoon or juggler. *Spelman, voc. Goliardensis.*

**GOOD ABEARING, (or ABEARANCE.)** [Lat. *bonus gestus.*] In old English law. The exact carriage or behaviour of a subject to the king and his liege people, to which men were sometimes anciently bound, upon their evil course of life or loose demeanor. He who was bound to this was more strictly bound than to the peace; for the peace was not broken without an actual affray, battery, &c.; but this might be forfeited by the number of a man's company, or by his or their weapons. *Lamb. Eirenarch. lib. 2, c. 2. Cowell. Termes de la ley.*

By the statute 34 Edw. III. c. 1, justices of the peace were empowered to bind over to the good behaviour towards the king and his people, all them *that be not of good fame*, wherever they be found. Blackstone refers to the provisions of this statute as still in force. 4 *Bl. Com.* 256. But according to Mr. Stephen, in what manner and to what extent they ought at the present day to be enforced, may be doubtful. 4 *Steph. Com.* 317.

**GOOD CONSIDERATION.** A consideration of blood, or of natural love and affection; as where a man grants an estate to a near relation, being founded on motives of generosity, prudence and natural duty. 2 *Bl. Com.* 297, 444. It is technically

distinguished from a *valuable consideration*, (q. v.)

**GOOD COUNTRY.** In Scotch law. Good men of the country. A name given to a jury. See *Bona patria*.

**GOOD MAN.** [L. Lat. *probus homo.*] A good and lawful man; (*probus et legalis homo.*) 3 *Bl. Com.* 102. Good men; (*probi* or *boni homines.*) Good and lawful men; (*probi et legales homines.*) *Mag. Chart. c. 14.* Terms applied in old English and feudal law to persons of unexceptionable character, and especially such as were qualified to act as jurors or witnesses in courts. See *Boni homines, Legalis homo.* The expression "*good and lawful men*" continues to be used in modern law, and criers in American courts ordinarily address a jury as "*you good men, &c.*"

**GOODS.** [Lat. *bona*; Fr. *biens.*] A term applied to certain descriptions of things moveable, and said to be one "of large signification." *Wilde, J., 3 Metcalf's R.* 367. In some of its connections, however, it is of more extensive import than in others. *Story, J., 2 Story's R.* 52. Strictly, it seems to be applicable only to *inanimate* moveables, being in this respect less comprehensive than *chattels* which include animals. 1 *Chitt. Gen. Pr.* 89, 90. 2 *Chitt. Bl. Com.* 384, note. Nor does it, according to Blackstone, embrace every variety even of inanimate property, *goods* being classed by him with plate, money, jewels, implements of war, garments and vegetable productions, as so many species of inanimate things. 2 *Bl. Com.* 389. So it has been held that the term "*goods*" in a deed or contract will not, in general, include fixtures. 1 *Chitt. Gen. Pr.* 90. In the United States, *goods* have been held to include money, bank notes and coin, promissory notes and the stock or shares of an incorporated company. 5 *Mason's R.* 537. See 2 *Story's R.* 52. 3 *Metcalf's R.* 365. 20 *Pick. R.* 9. See *Bona, Chattels.*

In wills, the term *goods* is taken in a large sense, and will comprise the entire personal estate of a testator, unless restrained by the context within narrower limits. 1 *Jarman on Wills*, 692, (594, Perkins' ed. 1849.) It is called *nomen generalissimum*, and when construed in the abstract will embrace all the personal estate of a testator, as stock, bonds, notes, money, plate, furniture, &c. 1 *Roper on Legacies*, 250. *Ward on Legacies*, 208, 209. *Story, J., 2 Story's R.* 53. See *Household goods*.



*Good*, in the singular, is rarely used. 2 *Bl. Com.* 424, 425.

**GOODS AND CHATTELS.** [L. Lat. *bona et catalla*; L. Fr. *biens et cateux*.] A phrase very commonly used to designate personal property; the word *chattels* serving to extend its application to subjects which the word *goods* alone would not embrace. It includes not only personal property in possession, but also choses in action, and by force of the word *chattels*, all animate as well as inanimate property, emblements and other vegetable productions, and leases for years of houses or lands. 12 *Co.* 1. 1 *Atk.* 182. 1 *Chitt. Gen. Pr.* 89, 90.

In wills, the term *goods and chattels* will, unless restrained by the context, pass all the personal estate, including leases for years, cattle, corn, debts and the like. *Ward on Legacies*, 208, 211.

**GOODS, WARES AND MERCHANTIZE.** A phrase of frequent occurrence in statutes, pleadings and other instruments. In the Statute of Frauds, it has been held in Massachusetts to include the stock of an incorporated company, but the point is not settled in England. 20 *Pick. R.* 9. 2 *Kent's Com.* 510, note. In Georgia the words have been held not to include treasury checks. *Id. ibid.* *Dudley's R.* 28. See *Merchandize*.

**GOOLE.** [from Fr. *goulet*, or Lat. *gula*.] In old English law. A breach in a bank or sea wall, or a passage worn by the flux and reflux of the sea. *Stat.* 16 and 17 *Car. II.* c. 11.

**GORE.** A small narrow slip of ground. *Kennett's Par. Ant.* 534, 393. *Cowell*.

**GORS, Gorce, Gort, Guort.** L. Fr. & Eng. In old English law. A wear; a pool or pit of water, or confined place in a river, to take or keep fish in. *Domesday. Spelman.* *Britt.* c. 20, 62. *Co. Litt.* 5 b.

**GRACE.** L. Fr. & Eng. [Lat. *gratia*.] Favor or indulgence, as distinguished from right. Acts of parliament granting pardons are called acts of *grace*. 1 *Bl. Com.* 184. *Plus de grace q'de droit*; more of favor than of right. *Britt.* c. 69.

**GRACE, Days of.** See *Days of Grace*.

**GRADALE, Graduale.** L. Lat. In canon law. A book pertaining to the offices of the Romish church, and enumerated

among its furniture in the *Provinciale Anglicanum. Lyndewode Prov. Angl.* lib. 3. tit. *de eccles. edific.* c. 2. *Spelman. Plowd.* 542.

**GRADATIM.** Lat. [from *gradus*, q. v.] In old English law. By degrees or steps; step by step; from one degree to another. *Bract.* fol. 64.

**GRADUS.** Lat. In civil and canon law. A degree in relationship. *Inst.* 3. 6. *Dig.* 38. 11. The word properly denotes a *step*, and is figuratively used, like the Gr. *βαθύς*, to express the course of relationship upwards, downwards, or collaterally, stepping as it were (*gradiendo*), from one person to another in the series. See *Degree*. *De gradu in gradum*; from degree to degree, or from step to step. *Bract.* fol. 374. Bracton uses it to signify the place occupied by a person in a scale or scheme of consanguinity; and where such place was left vacant by the death of such person, he calls it *gradus vacuus*, (a vacant or void degree.) *Bract.* fol. 134, 374.

**GRAFFARIUS, Grapharius.** L. Lat. In old English law. A graffer, notary or scrivener. *Stat. 5 Hen. VIII.* c. 1.

**GRAFIO, Graphio, Gravio, Gravius, Graphius.** L. Lat. In early European law. A fiscal judge: and derivatively, a count, (*comes*;) a count's deputy, or viscount, (*vice comes*, reeve, or sheriff;) a judge; a chief or presiding magistrate. Answering to the Anglo-Saxon *gerefa*, which *Spelman* supposes to be from the same root *gerefan*, or *reafen*, to take or exact; the proper meaning of the word, in his opinion, being an exactor, or collector of taxes, or public dues. *Spelman in voce*. The word *grafio* is confined to the laws of the early continental nations, and is generally used to denote a fiscal judge or count. *L. Salic.* tit. 33, 55. *L. Ripuar.* tit. 34, 84. See *Judex fiscalis, Comes*. It occurs however in a charter of Kenulph, king of the Mercians, quoted in the *Monasticon Anglicanum*, tom. 1, p. 100. *Cowell*. See *Gravius, Greve*.

**GRAFIUM, Graffium.** L. Lat. In old records. A writing book or register; a cartulary of deeds and evidences. *Cowell*.

**GRAILE.** The same as *Gradale*, (q. v.)

**GRAIN.** [Lat. *granum*.] The twenty-fourth (anciently the thirty-second) part of a penny-weight, or weight of an English

penny. By the statute *Compositio Mensurarum*, 51 Hen. III., it was ordained that the penny sterling should weigh thirty-two grains of corn from the middle of the ear; (*ponderabit triginta et duo grana frumenti in medio spicae*.) These natural grains were afterwards reduced to twenty-four artificial grains. *Cowell. Spelman*, voc. *Denarius*. *Stow's Ann.* cited *ibid*.

GRAND. [L. Fr. *grand*; Lat. *magnus*.] Great; large; high. A word formed from the French and still in use; contrasted generally with *petty*, (Fr. *petit*,) and denoting superiority either in magnitude, number or quality, as *grand jury*, *grand larceny*; or in point of precedence, dignity, importance or legal efficacy, as *grand assize*, *grand cape*, *grand distress*, (qq. v.)

GRAND ASSIZE. [L. Lat. *magna assisa*.] In practice. A special or extraordinary kind of jury, introduced by king Henry II. for the trial of writs of right, the tenant or defendant being allowed the choice of this mode of trial instead of that by battle, which previously was the only method in use. 3 *Bl. Com.* 341, 351. *Glanv.* lib. 2. cc. 6, 7. It consisted of four knights, returned by the sheriff, who chose twelve others to be joined with them; the whole assize thus being composed of sixteen jurors, or recognitors, as they were otherwise called. 3 *Bl. Com.* 351. *Glanv.* lib. 2. cc. 11, 12. 1 *Reeves' Hist. Eng. Law*, 86. See *De magna assisa eligenda*.

This kind of assize and the manner of choosing it are very fully described by Glanville, who is supposed by Sir William Blackstone to have advised the measure itself. 3 *Bl. Com. ub. sup.* The assize was called *grand*, according to Mr. Reeves, because the jurors were all knights, and were brought together also with more ceremony than those who composed the ordinary, minor or petit assize. 1 *Reeves' Hist. Eng. Law*, 86. *Spelman* voc. *Assisa*. It continued in use in England down to a recent period, being abolished by statute 3 & 4 Will. IV. c. 42, § 13. A similar kind of jury was also formerly in use in the State of New-York, when writs of right were authorized forms of procedure. 1 *Rev. Laws* of 1813, 50.

GRAND BILL OF SALE. In maritime law. The German *bielbrief* has been sometimes so called. *Jacobsen's Sea Laws*, 12. The English, French and American register of a vessel commences with the

contents of the *bielbrief*. *Id.* 13. See *Bielbrief*. The English cases speak of the transfer of a ship at sea by the assignment of the *grand bill of sale*; an expression which is understood to refer to the instrument whereby the ship was originally transferred from the builder to the owner, or first purchaser. 3 *Kent's Com.* 133.

GRAND CAPE. In practice. A judicial writ in the old real actions, which issued for the demandant where the tenant, after being duly summoned, neglected to appear on the return of the writ, or to cast an essoin, or, in case of an essoin being cast, neglected to appear on the adjournment day of the essoin; its object being to compel an appearance. *Roscoe's Real Act.* 165, *et seq.* It was called a *cape*, from the word with which it commenced, and a *grand cape* (or *cape magnum*,) to distinguish it from the *petit cape*, which lay after appearance. *Id. ibid.* See *Cape*.

GRAND CAPE AD VALENTIAM. L. Lat. A species of grand cape which issued against a vouchee, or person vouched to warranty in a real action. *Roscoe's Real Actions*, 268.

GRAND COUTUMIER, or *Coutumier de France*. In early European law. A collection of the customs, usages and forms of practice which had been in use from time immemorial in the kingdom of France, first projected by Charles VII. in 1453, but not completed until 1609. *Crabb's Hist. Eng. Law*, 69. It consisted of the *coutumiers*, (or collections of customs,) of the various provinces and places in France. The best edition of this is by Richebourg in four volumes folio. It contains near one hundred collections of the customs of provinces, and two hundred collections of the customs of cities, towns and villages. *Butler's Co. Litt.* Note 77, Lib. 3.

GRAND COUTUMIER DE NORMANDIE. L. Fr. A collection of the laws and ducal customs of Normandy, composed about A. D. 1229, in the reign of Henry II. of England. *Hale's Hist. Com. Law*, c. 6. This, from its high antiquity, and the relation it bears to the feudal jurisprudence of England, is particularly interesting to an English reader. The most esteemed edition is that by Basnage, A. D. 1678. *Crabb's Hist. Eng. Law*, 69. *Butler's Co. Litt.* Note 77, Lib. 3. 1 *Reeves' Hist. Eng. Law*, 224, 225. 3 *Kent's Com.* 501—503, note, *ad fin.*

**GRAND DAYS.** In English practice. Certain days in the terms, which are solemnly kept in the inns of court and chancery, viz. Candlemas day in Hilary Term, Ascension day in Easter, St. John the Baptist's day in Trinity, and All Saints in Michaelmas; which are *dies non-juridici*. *Termes de la ley*. Cowell. Blount. Wharton. According to Mr. Holthouse, they are days set apart for peculiar festivity; the members of the respective inns being on such occasions regaled at their dinner in the hall, with more than usual sumptuousness. *Holthouse, in voc.*

**GRAND DISTRESS.** [L. Fr. *grund destresse*; L. Lat. *magna districtio*.] In English practice. A process which formerly issued in actions, where the tenant or defendant, after being attached, and so returned, neglected to appear; its object being to compel an appearance by distraining his goods and the profits of his lands. Cowell. Britt. c. 26. 3 *Bl. Com.* 280. It is called *grand* from its extent and stringency, and is still retained in the action of *quare impedit*. Blount. 3 *Steph. Com.* 662.

**GRAND JURY.** In criminal law. A jury of inquiry, summoned at courts of sessions and oyer and terminer, whose duty it is, after being duly sworn and charged by the presiding judge, to receive and hear complaints or accusations in criminal cases, and if they find them sustained by evidence, (which is presented on the part of the prosecution alone,) to find bills of indictment against the persons complained of.\* 4 *Bl. Com.* 302, 303. 4 *Steph. Com.* 369, 370. It is called *grand* to distinguish it from the ordinary or *petit* jury, being composed of a larger number of jurors, varying from twelve to twenty-three. *Id. ibid.* In New-York it is composed of a number varying from sixteen to twenty-three. 2 *Rev. St.* [724,] 605, § 26.

**GRAND LARCENY.** In English criminal law. A stealing of property of above the value of twelve pence. 4 *Bl. Com.* 241. So distinguished from *petit* larceny, which was theft of property to the value of twelve pence or under. The distinction between these two kinds of larceny is of great antiquity, and was only recently abolished in England by statute 7 & 8 Geo. IV. c. 29, ss. 2, 3, 4. 4 *Steph. Com.* 159. 2 *Russell on Crimes*, 1. In the United States it is generally retained, although the sum adopted as its basis is much above the old English standard. Wharton's *Am. Crim. Law*, 387, 389. Lewis' *U. S. Crim.*

*Law*, 442, 444. 2 *Russell on Crimes*, 1, (Am. ed. 1850, note.) In New-York, grand larceny is the felonious taking of personal property of the value of more than twenty-five dollars. 2 *Rev. St.* [679,] 566, § 63.

**GRAND SERJEANTY.** [L. Fr. *graund serjeantie*; L. Lat. *magna serjeantia* or *serjanteria*, or *magnum servitium*.] In English law. A species of tenure *in capite*, (called, though improperly, a species of knight-service,) whereby the tenant was bound, instead of serving the king generally in his wars, to do some special honorary service to the king in person; as to carry his banner, his sword, or the like, or to be his butler, champion, or other officer, at his coronation. 2 *Bl. Com.* 73. *Litt. sect.* 153. Britt. c. 66. 1 *Steph. Com.* 188. It was called *grand* serjeanty, as well in respect of the excellency and greatness of the person to whom it was to be done, as of the honor of the service itself. *Co. Litt.* 105 b. The services of this tenure are still reserved by the statute 12 Car. II. c. 24, though the tenure, in other respects, is converted into free socage. 1 *Steph. Com.* 197, 198. 1 *Crabb's Real Prop.* 591, 592, § 747.

**GRANGE.** L. Fr. & Eng. [L. Lat. *grangia*, *grangea*.] A building where corn or grain is kept and stored; a barn or granary. *Co. Litt.* 5 a. Spelman, *voc. Granarium*. *Reg. Orig.* 289 b.

The term also includes other outbuildings necessary for husbandry, as stables for horses, stalls for oxen, and other animals, &c. *Id. ibid.* Lyndewode, *Prov. Angl.* lib. 2, tit. *De judiciis*, c. *Item omnes*. Spelman. It is used in England as an ordinary term for a farm yard or farmery. Brande.

**GRANGEA, Grangia.** L. Lat. In old English law. A grange. *Reg. Orig.* 289 b. *Stat. Westm.* 2, c. 39. Spelman, *voc. Granarium*. See *Grange*.

**GRANGIARIUS, Grangerus.** L. Lat. In old English law. A granger, or grange keeper. *Fleta*, lib. 2, c. 82, § 1. Cowell.

**GRANT.** [L. Lat. *concessio*.] In a large sense, the passing of a thing from one person to another. In this sense, it comprehends feoffments, bargains and sales, gifts, leases, &c., for he that gives or sells grants also. *Shep. Touch.* 228. Story, J., 4 *Mason's R.* 69.

In a more strict and proper sense, a species of common law conveyance, appro-

priate to the transfer of incorporeal hereditaments, (as rents, &c.,) and of estates in expectancy, (as reversions and remainders,) in corporeal hereditaments, of which no livery, (that is, delivery,) can be made. 2 *Bl. Com.* 317. 1 *Steph. Com.* 474. Hence these hereditaments and estates are said to *lie in grant*, while corporeal hereditaments in possession are said to *lie in livery*. *Id. ibid.* *Co. Litt.* 172 a. *Shep. Touch.* 228. *Watkins' Conv.* 193. 4 *Kent's Com.* 490. The appropriate and operative words of a grant are, "have given and granted," (anciently, *dedi et concessi*.) 2 *Bl. Com. ub. sup.* 1 *Steph. Com. ub. sup.*

In the United States, the term *grant* continues, in general, to be specifically applied to the conveyance of incorporeal hereditaments, and to letters patent from government. In New-York, however, by the Revised Statutes, this ancient and distinctive meaning of the word has been abrogated, and deeds of bargain and sale, and of lease and release, including all conveyances of the inheritance or freehold, are declared to be deemed *grants*. 1 *Rev. St.* [738,] 731, §§ 137, 138, 142. 4 *Kent's Com.* 491, 492. So in Massachusetts, the term *grant* in a statute, means the transfer of lands or houses by deed or other effectual conveyance, and does not apply exclusively to incorporeal hereditaments. 2 *Hilliard's Real Prop.* 297. So, in New-Hampshire and Maine. *Id. ibid.*

**GRANT OF PERSONAL PROPERTY.** A method of transferring personal property, distinguished from a gift by being always founded on some consideration or equivalent. 2 *Bl. Com.* 440, 441. Its proper legal designation is an *assignment*, or *bargain and sale*. 2 *Steph. Com.* 102.

To **GRANT.** [L. Lat. *concedere*.] An operative word of conveyance, particularly appropriate to deeds of grant, properly so called, but used in other conveyances also, such as deeds of bargain and sale, and leases. See *Grant, Bargain and Sale, Lease*. According to Lord Coke, the word *concessi* (I have granted) may amount to a grant, a feoffment, a gift, a lease, a release, a confirmation, a surrender, &c.; and it is in the election of a party to use it to which of these purposes he will. *Co. Litt.* 301 b. It is the general operative word of conveyance in New-York. 4 *Kent's Com.* 491. It was formerly held, in England, to amount to a covenant in law. See *Concessi*. But by a late act of parliament, it is declared not to imply any covenant in law in respect of any tenements or hereditaments, except

in cases where, by act of parliament, it is declared that it shall have such effect. *Stat. 8 & 9 Vict. c. 10, s. 6*. In Pennsylvania, the words, "grant, bargain and sell," in a conveyance, have been held not to amount to a general warranty, but merely to a covenant that the grantor has not done any act, nor created any incumbrance whereby the estate granted by him may be defeated. 2 *Binney's R.* 95. And the same rule prevails in Delaware and Missouri. *Holthouse Law Dict.* (Am. ed.) See 2 *Hilliard's Real Prop.* 365.

**GRANTEE.** [L. Lat. *concessus*.] The person to whom a grant is made.

**GRANTOR.** [L. Lat. *concessor*.] The person by whom a grant is made.

**GRANTZ.** L. Fr. *Grandeas*, or great men. *Parl. Rot. 6 Edw. III. n. 5, 6*.

**GRAPHIA.** L. Lat. [from Gr. *γραφη*.] In old European law. A writing. *Spelman*.

The office or territorial jurisdiction of a *graphio* or *grafio*. *Id.* See *Grafio*.

**GRASS-HEARTH.** [q. d. *graze earth*.] In old records. The grazing or turning up the earth with a plough. The name of a customary service for inferior tenants to bring their ploughs, and do one day's work for their lords. *Kennett's Par. Ant.* 496, 497. *Cowell*.

**GRATIS DICTUM.** Lat. A voluntary assertion; a statement which a party is not legally bound to make, or in which he is not held to precise accuracy. 2 *Kent's Com.* 486. 6 *Metcalf's R.* 260.

**GRATUITOUS.** [Lat. *gratuitus*, from *gratis*, freely.] Without valuable or legal consideration. A term applied to deeds of conveyance. See *Gift*.

In old English law. Voluntary; without force, fear or favor. *Bract. fol.* 11, 17.

**GRAUND, Graunde.** L. Fr. [from Lat. *grandis*, great.] Great; high. *A la grande grevaunce*; to the great grievance. *Britt. c.* 21. *Gravund treson*; great or high treason. *Id. c.* 8.

**GRAUNTE.** L. Fr. *Grant*. *Britt. c.* 39.

**GRAVA, Grova.** L. Lat. In old English law. A grove; a small wood; a coppice or thicket. *Co. Litt.* 4 b. *Cowell. Blount. Spelman*,

A thick wood of high trees. *Dugdale's Warwickshire*, 508 b. *Blount*.

**GRAVAMEN.** L. Lat. [from *gravare*, q. v.] A grievance, or thing complained of; the essence of a complaint.

**GRAVARE.** Lat. To grieve or aggrieve; to injure or oppress. *Stat. Westm.* 2, c. 38, 37. *Gravati*; aggrieved. *Id. ibid.*

**GRAVIS.** Lat. Grievous; great. *Ad grave damnum*; to the grievous damage. 11 Co. 40.

**GRAVIUS, Gravia.** L. Lat. A grave, a chief magistrate or officer. A term derived from the more ancient *grafio*, and used in combination with various other words, as an official title in Germany; as *Margravius, Rheingravius, Landgravius*, &c. *Spelman*, voc. *Grafio*.

**GREAT TITHES.** In English ecclesiastical law. Tithes of corn, peas and beans, hay and wood. 2 *Chitt. Bl. Com.* 24, note. 3 *Steph. Com.* 127.

**GREE, Gre.** L. Fr. Satisfaction; contentment. *A faire gree*; to make satisfaction. *Artic. sup. Chart.* c. 12. *Soit gre maintainant fait.* *Id.* c. 2. *Fra gree al defendaut*; shall make satisfaction to the defendant. *Britt.* c. 25. *Cowell*.

Agreement; will; consent. *Per le gree, ou sans le gree*; by the consent, or without the consent. *Stat. Westm.* 1, c. 1. See *Id.* c. 22. *Bon gree ou mal gree le tenant*; whether the tenant be willing or unwilling. *Britt.* c. 41. *De lour gree*; of their own accord. *Id.* c. 27.

*Cowell* treats this as an English word, and it may have anciently been used as such; but the passages above quoted show it to be French. It seems to be the root of the word *agree*.

**GREEN CLOTH.** In English law. A board or court of justice held in the counting-house of the king's [or queen's] household, and composed of the lord steward and inferior officers. It takes its name from the green cloth spread over the board at which it is held. *Wharton's Lex.* *Cowell*, voc. *Counting House*.

**GREENHEW.** In forest law. The same as *vert*, (q. v.) *Manwood*, part 2, c. 6, nu. 5. *Termes de la ley*.

**GREEN WAX.** In old English law. The estreats of issues, fines, and amercia-

ments in the exchequer, delivered out to the sheriffs under the seal of that court made in *green wax*, to be levied by them in their several counties. *Stat. 42 Edw. III.* c. 9. *Stat. 7 Hen. IV.* c. 3. *Termes de la ley.* *Cowell.* 4 *Inst.* 107. See *Estreat*.

**GREEVE.** L. Fr. Grievous. *Stat. Westm.* 1, c. 5. See *Greve*.

**GREGORIAN CODE.** The code or collection of constitutions made by the Roman jurist Gregorius. See *Codex Gregorianus*.

**GREINDER.** L. Fr. Greater. *Greinder ou meinder*; greater or less. *Litt.* sect. 120.

**GREMIUM.** Lat. Bosom. *De gremio mittere*; to send from the bosom. A term formerly used to denote the sending of a person as a delegate from a conventual church, monastery, or other body of persons; à *latere legare* being the proper phrase where the delegate was sent by an individual. *Spelman*.

**GRESSUME, Gressum.** In English law. A customary fine due from a copyhold tenant on the death of the lord. 1 *Stra.* 654. 1 *Crabb's Real Prop.* 615, § 778. Called also *grassum*, and *grossome*, (q. v.)

**GREVA.** L. Lat. In old records. The sea shore, sand or beach. 2 *Mon. Angl.* 625. *Cowell*.

**GREVE, Gereve.** Sax. [from Sax. *gerefa*, q. v.] The contracted form of *gerefa* or *grefa*, used in the time of Edward the Confessor, to denote a chief magistrate or lord, (*præfectus, præpositus*.) *L.L. Edw. Conf.* c. 35. *Spelman*, voc. *Grafio*. Answering to the Germ. *grave*, from *grafio*, (q. v.) Afterwards still further shortened by the Anglo-Normans into *reve*, or *reeve*, which continues to be used in English law. *Spelman, ub. sup.* *Cowell. Blount*. There were various compounds of this word, as *shire-greve*, or *shire-reve*, the chief officer of the shire or county, now *sheriff*; *port-greve*, the chief magistrate of a port; *led-greve*, of a lathe; *hundred-greve*, of a hundred; *tun-greve*, of a town or vill, and the like. *Spelman, ub. sup.* See *Reve, Reeve*.

**GREVE, Greeve, Gref.** L. Fr. [from Lat. *gravis*.] Grievous; severe. *Et serra en le greve mercy le roy*; and shall be in

the grievous mercy of the king; shall be heavily amerced. *Stat. Westm.* 1, c. 15.

**GREVEMENT.** L. Fr. Grievously, heavily, or severely. *Soit grevement rente*; he shall be grievously fined. *Stat. Westm.* 1, c. 16. See *Britt.* c. 30.

**GREVER.** L. Fr. To hurt or harm. *Britt.* c. 22.  
To prejudice or injure. *Id.* cc. 28, 39.

**GRITH.** Sax. Peace.

**GRITHBRECH.** Sax. [from *grith*, peace, and *brych*, a breach or breaking.] In Saxon and old English law. A breach or violation of the peace. *In causis regis* grithbrech 100 *sol.*—*emendabit.* *LL. Hen.* 1, c. 36. *Spelman.* Sometimes called *frithbrech.* *LL. Ethelred.* c. 6.

**GRITHSTOLE.** Sax. [from *grith*, peace, and *stol*, a seat or chair.] In Saxon law. A seat, chair, or place of peace; a sanctuary; a stone within a church gate, to which an offender might flee. So called in an old rhyming charter of King Athelstan to the chapel of St. Wilfrid of Rippon:

And within yair Kyrke yate,  
At ye stan yat *Grithstole* hate.

**GROCER.** In old English law. A merchant or trader who *engrossed* all vendible merchandise; an engrosser. *Stat.* 37 *Edw.* III. c. 5. See *Engrosser.*

**GRONNA.** L. Lat. In old records. A deep hollow or pit; a bog or miry place. *Cowell.* *Spelman* doubts as to the meaning of this word.

**GROS.** L. Fr. Substance. *En gros*; in substance. *Britt.* c. 22.

Substantial; material; essential. *Sur ascun gros point*; upon any material point. *Id.* c. 98.

**GROSS.** [L. Fr. *grosse*; L. Lat. *grossus*.] Great or large. See *infra*.

In large quantities. *In grosso*; in the gross, by the wholesale. See *Grossus*.

Whole or entire; absolute or independent; the opposite of *appendant*. *Cowell.* See *Common in gross*.

**GROSS AVERAGE.** In maritime law. That kind of average which falls upon the gross amount of ship, cargo and freight. 3 *Kent's Com.* 232. More commonly termed *general average*, (q. v.)

**GROSS NEGLIGENCE** or **NEGLECT.** [Lat. *magna*, or *crassa negligencia*.] In the law of bailment. The want of slight diligence. *Story on Bailm.* § 17. The want of that care which every man of common sense, how inattentive soever, takes of his own property. *Jones on Bailm.* 118. 2 *Kent's Com.* 560.

**GROSSA.** L. Lat. In old English law. A groat. *Cowell.*

A gross. 1 *Mon. Angl.* 118. *Towns. Pl.* 173.

**GROSSE, Gros.** L. Fr. Great; large.

**GROSSE BOIS, Gros bois, Grosse boys, Grosse boyes.** L. Fr. Great or large wood; timber. *Cowell.* 2 *Inst.* 642.

**GROSSEMENT.** L. Fr. Largely, greatly. *Grossement enseint*; big with child. *Plowd.* 76.

**GROSSOME.** In old English law. A fine, or sum of money paid for a lease. *Plowd.* 270, 271. Supposed to be a corruption of *gersuma*, (q. v.) See *Gressume*.

**GROSSUS.** L. Lat. In old English law. Large. *Grossus piscis*; large or great fish. *Bract.* fol. 14, 120. *Grossi arbores*; great trees or wood. *Cro. Eliz.* 244.

In large quantities. *Tam in grosso, quam in retalia*; as well by the wholesale as by retail. *Reg. Orig.* 184.

Important or material. *Stat. Westm.* 2, c. 30.

**GROUND ANNUAL.** In Scotch law. A ground rent payable out of the ground before the tenement in a burgh is built; used in contradistinction to the term *feu annual*. *Scotch Dict.*

**GROUND RENT.** Rent paid for the privilege of building on another's land. *Webster.* A rent paid by a lessee who has built on the ground leased; and thus distinguished from the rent paid to him by the tenants of the buildings.\*

In Pennsylvania, this term is used to denote a fee farm rent. 1 *Hilliard's Real Prop.* 239.

**GROVA, Grava.** L. Lat. In old records. A grove. *Spelman*, voc. *Grava*.

**GROWING CROPS** of grain, and other annual productions raised by cultivation of the earth and industry of man, are personal chattels. 1 *Denio's R.* 550. *Grow-*

ing trees, fruit or grass, and other natural products of the earth, are parcel of the land. *Id. ibid.*

**GUADAGIUM**, *Guidagium*. L. Lat. [Fr. *guydage*; from Sax. *wæg*, way; quasi *waidagium*.] In old law. Guidage or conduct; the compensation given therefor. That which is given for safe conduct through another's territory. *Spelman. Prateus.*

**GUADIA**, *Wadia*. L. Lat. In old European law. A pledge. *Spelman. Calv. Lex.*

A custom. *Spelman.*

**GUARANTEE** is used both as a noun and verb, as another form of *guaranty*, (q. v.)

**GUARANTOR**. A person who undertakes to guaranty; a warrantor; a surety.

**GUARANTY**, *Guarantee*. L. Fr. & Eng. A promise to answer for the payment of some debt, or the performance of some duty, in case of the failure of another person, who, in the first instance, is liable to such payment or performance. *Fell on Guaranties*, 1. 3 *Kent's Com.* 121.—An engagement to be responsible for the debts or duty of a third person, in the event of his failure to fulfil his engagement. *Story on Contracts*, § 852. The primary meaning of guaranty is an undertaking to pay the debt of another in case he does not pay it. 24 *Pick. R.* 250, 252. See *U. S. Digest and Supplement*, Guaranty.

This word seems to be essentially the same with *warranty*; being scarcely distinguishable from *garrantie* and *garrantie*, (qq. v.) the old French forms of that word. *Guarantie* is the form used by Mr. Fell in his Treatise.

To **GUARANTY** (or **GUARANTEE**.) [L. Lat. *guarentare*, *guarentisare*.] To become responsible for the payment of money or the performance of a duty by another person; to warrant the payment of a debt or performance of a duty by another, who is primarily and properly liable to pay or perform it; to undertake that a person shall pay a certain debt or perform a certain duty to another, or, in case of failure on his part, that the party guaranteeing will himself pay the debt, or answer for the default. The obligation of a guaranty is essentially in the *alternative*, as is noticed by Britton in his definition of *garaunter*, (to warrant.) *Britt. c.* 75. See *Guaranty*.

**GUARDIA**, *Wardia*, *Warda*. L. Lat. [from Fr. *garder*, to keep.] Ward; custody; safe keeping; protection. *Spelman.* See *Ward*.

**GUARDIAN**, *Gardian*, *Gardeyne*. [from Fr. *gardein*, (q. v.); L. Lat. *guardianus*, *guardianus*; Lat. *custos*, tutor, curator.] A keeper or protector; one who has the charge or custody of any person or thing. *Cowell. Spelman*, voc. *Guardianus*, *Guardia*.

In a stricter sense, one who has or is entitled to the custody of the person or property of an infant; answering to the *tutor* and *curator* of the civil law. *Cowell*, voc. *Gardeyne*. 1 *Bl. Com.* 460.

**GUARDIAN BY NATURE**. The father, and, on his death, the mother of a child. 1 *Bl. Com.* 461. 2 *Kent's Com.* 219. This guardianship extends only to the custody of the person of the child, to the age of twenty-one years. *Id. ibid.* Sometimes called *natural* guardian, but this is rather a popular than a technical mode of expression. 2 *Steph. Com.* 337. Guardianship by nature, in the correct and technical meaning of the term, is that which belongs to the ancestor in respect of his heir apparent, male or female. *Id. ibid. Harg. Co. Litt.* Notes 63—71, lib. 2.

**GUARDIAN FOR NURTURE**. The father, or, at his decease, the mother of a child. 2 *Steph. Com.* 338. This kind of guardianship extends only to the person, and determines when the infant arrives at the age of fourteen. *Id. ibid.* 2 *Kent's Com.* 221. 1 *Bl. Com.* 461. Supposed to be obsolete in the United States. 2 *Kent's Com. ub. sup.*

**GUARDIAN IN SOCAGE**. A species of guardian who has the custody of the infant's lands as well as of his person, until the age of fourteen. This kind of guardianship springs wholly out of tenure, and applies only to lands which the infant acquires by descent. By the common law it devolves to the next of blood to whom the inheritance cannot possibly descend, and for this reason it is supposed that it can hardly be said to exist in this country. 1 *Bl. Com.* 461, 462. 2 *Steph. Com.* 338. 2 *Kent's Com.* 221, 223.

**GUARDIAN BY STATUTE**, or *Testamentary Guardian*. A guardian appointed for a child by the deed or last will of the father, and who has the custody both of his person and estate until the attainment

of full age. This kind of guardianship is founded on the *statute* of 12 Car. II. c. 24, and has been pretty extensively adopted in this country, with the exception of New England. 1 *Bl. Com.* 462. 2 *Steph. Com.* 339, 340. 2 *Kent's Com.* 224—226.

#### GUARDIAN BY APPOINTMENT OF THE COURT OF CHANCERY.

The most important species of guardian in modern law, having custody of the infant until the attainment of full age. It has in England in a manner superseded the guardian in socage, and in the United States the guardian by nature also. 2 *Steph. Com.* 341. 2 *Kent's Com.* 226. Under this title are included guardians appointed by all courts having chancery or equity powers, as orphans' courts, surrogates' courts, courts of probate and the like. *Id. ibid.* note.

**GUARDIAN AD LITEM.** A guardian appointed by a court of justice to prosecute or defend for an infant, in any suit to which he may be a party. 2 *Steph. Com.* 342. Most commonly appointed for infant defendants; infant plaintiffs generally suing by *next friend*. See *Next friend*, *Prochein ami*. This kind of guardian has no right to interfere with the infant's person or property. 2 *Steph. Com.* 343. See *Ad litem*.

**GUARDIAN (or GARDEYNE) DE L'EGLISE.** L. Fr. A church warden, (q. v.) *Cowell*.

**GUARDIAN (or GARDEYNE) OF THE PEACE.** See *Conservator of the peace*.

**GUARDIAN OF THE CINQUE PORTS.** See *Warden of the Cinque Ports*.

**GUARDIAN OF THE POOR.** An officer appointed in England, to act in lieu of an overseer. *Wharton's Lex.*

**GUARDIAN OF THE SPIRITUALTIES.** [L. Lat. *custos spiritualium*.] In English ecclesiastical law. The person to whom the spiritual jurisdiction of a diocese is committed, during the vacancy of the see. *Stat. 25 Hen. VIII. c. 21. Cowell. Blount. Termes de la ley.*

**GUARDIAN OF THE TEMPORALTIES.** [L. Lat. *custos temporalium*.] In English ecclesiastical law. The person to whose custody a vacant see or abbey was

committed by the king, who, as steward of the goods and profits thereof, was to give an account to the escheator, and he into the exchequer. *Tomlins*.

**GUARDIANUS.** L. Lat. A guardian, keeper, or warden. *Spelman*, voc. *Guardia*. 3 *Salk.* 176. More commonly written *Gardianus* (q. v.)

**GUARENTISARE, Garentizare.** L. Lat. To warrant. *Spelman*. More commonly written *Warrantizare*, (q. v.)

**GUARNIMENTUM.** L. Lat. [from Fr. *garnement*.] In old European law. A provision of necessary things. *Spelman*. A furnishing or garnishment.

**GUARRA.** L. Lat. War. See *Guerra*.

**GUBERNATOR.** Lat. In Roman law. The pilot or steersman of a ship. 2 *Peters' Adm. Dec.* Appendix, lxxxiii. *Molloy de Jur. Mar.* 243.

**GUERPI, Guerpy.** L. Fr. Abandoned; left; deserted. *Britt.* c. 33.

**GUERRA, Guarra, Werra.** L. Lat. [from Sax. *gar*, a weapon.] In old English law. War, either public or private. *Spelman*. In *tempore guerra*; in time of war. *Mag. Chart.* c. 30. *Si tempore guerræ illata fuerit violentia, statim post guerram reclamet, &c.* if the violence was offered in time of war, immediately after the war he may reclaim, &c. *Bract.* fol. 16 b.

**GUERRE, Gurra, Guer, Gero.** L. Fr. War. *Kelham*.

**GUERRINUS.** L. Lat. [from *guerra*, war.] Of, or relating to war; warlike; hostile. *Spelman*, voc. *Guerra*.

**GUEST TAKER, or GIST TAKER.** In old English law. An agister. See *Agistator*.

**GUIDAGE, GUYDAGE.** [L. Lat. *guidagium*.] In old law. That which was given for safe conduct through a strange territory, or another's territory. *Cowell*.

The office of guiding of travellers through dangerous and unknown ways. 2 *Inst.* 526.

**GUIDON.** An old French work on insurance, more commonly known as *Le Guidon*, (q. v.)

**GUIFARE.** *Guiphare, Huifare, Wi-*









